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HELLENIC DATA PROTECTION
AUTHORITY

Accreditation Requirements for Codes of Conduct Monitoring Bodies

Introduction:

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation — hereinafter, GDPR) applies since 25 May 2018.

Codes of conduct are provided for in Article 40 of the GDPR and are drawn up by associations or other bodies representing categories of data controllers or data processors. Their aim is to facilitate the effective application of the GDPR by calibrating specific obligations of controllers and processors for specific areas of activity. Although optional and not mandatory, the Hellenic Data Protection Authority (hereinafter, the HDPA) clearly encourages the drawing up of codes of conduct in line with those specified in Article 40 of the GDPR, in the sense that they can be a set of specific rules/practices to help ensuring compliance with the overall conditions for lawful processing of personal data as set out in the GDPR, taking account of the specific features of the various processing sectors¹.

The draft code is submitted to the HDPA which provides an opinion (pursuant to Article 40(5) of the GDPR) on whether the code in question is in conformity with the GDPR and approves it if it considers that it provides sufficient guarantees (whether it is a draft code, a modification or an extension of an already approved code). A code of conduct approved by the HDPA can be used as supporting evidence, provided that a controller or processor adheres to it, to demonstrate compliance with the obligations of the controller (Article

¹ In accordance with recital 98 of the GDPR, “Associations or other bodies representing categories of controllers or processors should be encouraged to draw up codes of conduct, within the limits of this Regulation, so as to facilitate the effective application of this Regulation, taking account of the specific characteristics of the processing carried out in certain sectors and the specific needs of micro, small and medium enterprises. In particular, such codes of conduct could calibrate the obligations of controllers and processors, taking into account the risk likely to result from the processing for the rights and freedoms of natural persons.”

24(3) of the GDPR) or as evidence to demonstrate that the processor provides sufficient guarantees under Article 28(1) and (4) (Article 28(5)).

In accordance with Article 41(1) of the GDPR, monitoring compliance with a code of conduct pursuant to Article 40 may be carried out by a body (hereinafter, monitoring body) which has an appropriate level of expertise in relation to the subject-matter of the code and is accredited for that purpose by the competent supervisory authority.

In accordance with Article 41(2) of the GDPR, the monitoring body may be accredited to monitor compliance with a code of conduct, provided that the body:

- (a) has demonstrated to the satisfaction of the HDPa its independence and expertise in relation to the subject-matter of the code,
- (b) has established procedures which allow it to assess the eligibility of controllers and processors concerned to apply the code, to monitor their compliance with its provisions and to periodically review its operation,
- (c) has established procedures and structures to handle complaints about infringements of the code or the manner in which the code has been, or is being, implemented by a controller or processor, and to make those procedures and structures transparent to data subjects and the public, and
- (d) has demonstrated to the satisfaction of the HDPa that its tasks and duties do not result in a conflict of interest.

In accordance with Article 41(3) of the GDPR, the competent supervisory authority shall submit the monitoring body's draft accreditation requirements to the European Data Protection Board (hereinafter, the Board) pursuant to the consistency mechanism referred to in Article 63 of the GDPR.

In this respect, the Board has adopted Guidelines 1/2019 on codes of conduct (hereinafter, codes) and monitoring bodies under the GDPR.

This document constitutes a set of accreditation requirements of the HDPa for monitoring bodies, which are submitted to the Board pursuant to Article 41(3) of the GDPR. In drawing up those requirements, the above guidelines of the Board were taken into consideration.

It should be noted that each time a code of conduct is being submitted for approval, the code owner (as defined next) shall demonstrate how the monitoring body proposed meets the above requirements. It is pointed out that the accreditation of a monitoring body applies only for a specific code of conduct: in case that the accredited body wishes to monitor another code of conduct, then a new accreditation is required.

The accreditation as a monitoring body shall be based on a written application to the HDPa. The accreditation application shall also include the following information: i) information identifying the monitoring body, ii) General Commercial Registry Number (if applicable), iii) VAT identification number, iv) the monitoring body's residence, v) contact details of persons who can be contacted for further information relating to the accreditation application, vi) specification of whether the monitoring body is internal or external (as defined next).

The application shall contain proof of fulfilment of the requirements by submitting relevant documents, as set out in these requirements.

The accreditation of a monitoring body will be valid for up to 5 years, unless the code itself provides for a shorter duration. The requirements may be reviewed before the end of the 5 years period. The accreditation can be revoked at any time, in case that specific preconditions occur, as described next. Three months before the expiration of the accreditation, the monitoring body shall submit to the HDPa a request for renewal, which should be again accompanied with all necessary documentation for demonstrating fulfilment of the requirements (with special indication on any updated information): the HDPa may ask, in the context of examining the request for renewal, additional detailed information on the monitoring activities that the body performed on controllers/processors within the whole previous period.

The present requirements do not apply, at the initial stage, in the case of monitoring bodies of codes of conducts being referred in Art. 40(3) of the GDPR, which may be adhered to by controllers or processors in order to provide appropriate safeguards within the framework of personal data transfers to third countries or international organisations under the terms referred to in point (e) of Article 46(2). The aforementioned Guidelines 1/2019 do not cover such a case.

Basic definitions

- a) Code owner²: association or body who draws up the code and submits it to the HDPa
- (b) Code member: any controller (Article 4(7) of the GDPR) or processor (Article 4(8) of the GDPR) who has signed up to the code.

Accreditation requirements

The following applies both to external and internal monitoring bodies in relation to the code owner³ (e.g. ad hoc internal committee or separate department within the organisation of the code owner), regardless of the fact that, in some cases, the requirements can be better met for external bodies than for internal ones. In specific cases of requirements relating only to internal monitoring bodies, specific reference is made.

1. General requirement of independence for monitoring bodies (Article 41 (2)(a))

The monitoring body of a code shall be independent both from the code owner and each of its members. Independence for a monitoring body should be understood as a series of formal rules and procedures for the appointment, terms of reference and operation of the monitoring body, allowing the monitoring body to perform the monitoring

² See also the definition of “code owner” in the EDPB Guidelines 1/2019.

³ See also relevant EDPB Guidelines 1/2019 on external and internal monitoring bodies.

of compliance with a code of conduct in complete autonomy, without being directly or indirectly influenced, nor subject to any form of pressure that might affect its decisions. This means that a monitoring body shall not be in a position to receive any instructions regarding the exercise of its task from code members, the profession, industry or sector to which the code applies, or from the code owner itself. Independence is demonstrated within four areas⁴: i) legal independence in decision-making procedures, (ii) financial independence, (iii) organisational independence, (iv) accountability.

Independence — as specified below — shall be derived from established clear rules and procedures, to ensure that the monitoring body acts autonomously and without any pressure from the code owner or the code members, as stated above. Such independence shall be demonstrated to the HDPa.

The monitoring body could be an internal or external body in relation to the code owner, provided that the independence referred to above is fully documented, as specified below.

i) Legal and decision making procedures

(A) The monitoring body shall be independent in decision making procedures on monitoring compliance with the code, from the code owner, the code members, and in general by the sector/industry to which the code applies.

(B) The monitoring body shall demonstrate to the HDPa that it will act independently in making decisions on code compliance. This could be demonstrated through clearly defined procedures for choosing those personnel involved both in compliance inspections/audits and decision-making. The body's established procedures shall ensure that its personnel shall be free from any influence in the performance of their duties both at personal and professional level (e.g. work-related collaborations). It shall also be demonstrated that the monitoring body will be legally able, based on its legal status, to issue enforceable decisions independently (e.g. its decisions shall be directly enforceable without any further approval or consultation required, even if it is an internal monitoring body or if the body is external but constitutes a part of a larger entity or group of companies/organisations). As far as issuing decisions is concerned, it shall be ensured that the monitoring body shall neither receive nor take instructions/guidance from anyone. This requirement applies not only to the monitoring body but also to its personnel involved in decision-making process. In particular, in case of an internal monitoring body in relation to the code owner, additional safeguards ensuring independence in decision-making shall be provided to the HDPa to demonstrate that the code owner will in no case affect its independence (e.g. documents and recorded procedures establishing its independence in decision making).

⁴ See relevant EDPB Opinion 9/2019.

(C) The monitoring body shall not provide any other service to the code members and/or the code owner (e.g. consultancy services relating to data protection issues), which could affect its independence in monitoring compliance with the code. An internal monitoring body cannot be setup within a code member.

ii) **Financial independence**

(A) The monitoring body shall demonstrate to the HDPa that it has the financial ability and the resources required to carry out its tasks in terms of monitoring compliance with the code. Long-term financial ability shall be ensured, to ensure the monitoring of the code of conduct over time. For example, if a code member, who is being monitored by the body, is able to discontinue its financial contribution to the body, thus resulting in making it difficult or impossible for the latter to perform its tasks of monitoring code compliance by the member in question, no financial independence can be inferred for the body⁵.

(B) The monitoring body shall have full autonomy in managing its finances (in other words, it shall be able to make financial decisions independently — e.g. on how its budget is to be allocated), which shall be demonstrated to the HDPa.

iii) **Organisational independence**

(A) The monitoring body shall have the human and technical resources necessary for the effective performance of their tasks. The monitoring body shall demonstrate to the HDPa that it has the sufficient number of sufficiently qualified personnel to carry out its tasks of monitoring compliance with the code, so as to act independently from code members and code owners. The body shall also demonstrate its full independence in relation to procedures followed regarding its personnel (such as organisational chart, allocation of responsibilities, recruitment and assignment procedures, etc.). The personnel of the monitoring body shall not suffer any adverse consequences/sanctions as a result of their duties.

(B) In the case of an internal monitoring body, its organisational independence in relation to the larger body/entity it is subject to shall be demonstrated by providing appropriate evidence (e.g. detailed description of the overall organisational structure, existence of separate reporting/document management and staff management procedures, information barriers, different name or logo). In any case, the operation of the monitoring body shall be independent from the operation of other accountability tools provided for in the GDPR which the code member under

⁵ This does not in principle exclude the possibility of payment made by the code members or the code owner to the monitoring bodies, for example, by means of a contract, for code monitoring compliance services provided by the body. Nor does it exclude the case of an internal independent monitoring body. In any case, however, it shall be demonstrated that there is no financial dependence which could affect the impartiality of the monitoring body.

scrutiny, either controller or processor, may use in the context of its compliance with the GDPR.

(C) Where the monitoring body uses third parties (sub-contractors/contractors) for the code compliance monitoring procedure, the body itself shall not be exempted from any of its relevant obligations and responsibilities provided for in the GDPR⁶. The obligations applicable to the monitoring body are applicable in the same way to the sub-contractor. The use of sub-contractors shall be demonstrated in writing and in such a way as to ensure that the sub-contractors in question provide the same guarantees of proper code compliance monitoring as applicable to the monitoring body. The monitoring body shall demonstrate to the HDPa that such guarantees are in place— such as:

- i) Relevant contracts/agreements outlining the obligations of the sub-contractor and containing clauses of confidentiality, an accurate description of the type of data to be processed and the purpose of the processing, as well as a requirement that the data are kept secure. The contracts shall make specific reference to the fact that the sub-contractor acts solely on the basis of recorded instructions from the monitoring body and is obliged to systematically inform the monitoring body of the findings/conclusions in relation to code compliance by code members on the basis of audits/inspections carried out, as well as to inform the monitoring body without delay in case a code member infringes the code.
- ii) The sub-contractor shall not be able in turn to recruit another sub-contractor/contractor to assign them code compliance monitoring.

The final decisions, in relation with the adherence or not of a code member to the code, shall be made by the monitoring body and not by the sub-contractor.

The monitoring body shall demonstrate to the HDPa that each sub-contractor meets the requirements of independence in relation to code members and code owners, and the requirements of expertise and non-conflict of interest (describing how the monitoring body itself has examined the fulfilment of those requirements and submitting relevant evidence to the HDPa). The monitoring body shall ensure effective monitoring of the services provided by the contracting entities.

iv) **Accountability**

(A) The monitoring body shall provide evidence to the HDPa to demonstrate that it is accountable for its decisions and actions (e.g. by giving an accurate description of the procedures to be followed and how these will be demonstrated by providing evidence on the suitability and adequacy of the processes put in place to identify and mitigate the risks of independence being undermined).

⁶ This means, inter alia, that the HDPa will revoke the accreditation of the monitoring body if the sub-contractor does not provide, or no longer provides, appropriate safeguards, or if the actions taken by the sub-contractor are in breach of the GDPR (see Article 41(5) of the GDPR).

2. General requirement for absence of conflict of interest (Article 41(2)(d))

The monitoring body shall have in place clear procedures to ensure that no natural or legal person carrying out code compliance monitoring tasks is linked, directly or indirectly, to the code member under scrutiny, as well as to the code owner, in such a way which may yield a conflict of interest.

The monitoring body shall be able to demonstrate that it has considered possible scenarios of conflicts of interest and has procedures in place to identify and effectively address them (e.g. complete exclusion of employees for whom a conflict of interest has arisen, with documented assurance that monitoring the code member in question will in no case be affected)). Such procedures shall be ongoing and mandatory for the personnel of the monitoring body which will be required to inform the body in case they consider that a conflict of interest has arisen. An example of a conflict of interest would be the case that the monitoring body personnel investigates complaints against the organization that they work for, or have previously worked for. Other examples of possible sources causing conflict of interests could be based on ownership, management, outsourcing and training.

In any case, the monitoring body shall ensure that its personnel does not have any other occupation/employment that would enable them, based on the outcome of code compliance monitoring, to obtain a comparative advantage in that other employment, compromising its impartiality in decision making.

3. General requirement for expertise in relation to the subject-matter of the code (Article 41(2)(a))

The monitoring body shall provide to the HDPa evidence that it has the expertise to undertake effective monitoring of a code (e.g. relevant qualifications of the personnel as analysed next, relevant/related work experience, other relevant recognitions). Expertise involves the subject-matter (sector) of the code, in which case the relevant requirements that must be fulfilled can be specific, based on the sector to which the code applies — in which case the code itself should set the requirements in question. The risks of the processing activities addressed by the code and the different interests involved should also be taken into account. Regarding relevant qualifications, an in-depth understanding of data protection issues and experience in relation to the specific data processing activities, as well as an appropriate operational experience with the ability to conduct appropriate compliance audits shall be also demonstrated (for example, through university degrees, certifications, relevant training courses etc.).

The monitoring body shall retain personnel job descriptions in terms of expertise with appropriate evidence for each member of its staff.

4. General requirement to establish procedures which allow it to assess the ability of code members to apply the code, to monitor their compliance with its provisions and to periodically review its operation (Article 41(2)(b))

The monitoring body shall demonstrate to the HDPa that it has in place effective mechanisms to monitor controllers' and processors' compliance with the code, with appropriate review procedures, which can include audits, inspections, reporting and the use of self-monitoring reports or questionnaires. Also, the monitoring body shall demonstrate that it has a procedure for the investigation, identification and management of code member infringements to the code and additional controls to ensure appropriate action is taken to remedy such infringements as set out in the relevant code.

In this respect, the body shall draft an official policy (e.g. approved by the monitoring body's Senior Manager) containing at least the following:

- 1) Scheduling information for audits to be carried out (for example, when audits are to be conducted, whether they will be unannounced and, if so, what criteria will be used to decide on whether they will be conducted, etc.), with appropriate documentation on the effectiveness of such scheduling, taking into account the periodic review of compliance that is required, the number of code members, their geographical distribution, the specific characteristics of the sector in which the code lies in, as well the complaints that are being submitted against code members.
- 2) Information on the auditing methodology to be followed (e.g. on the spot checks, interviews, questionnaires, etc.) as well as documentation on why the methodology in question is effective (e.g. audit check points, how to verify compliance with them, etc.). The monitoring body shall have specific and effective control powers (e.g. it must have been explicitly provided for that members under scrutiny are required to fully facilitate code compliance audits). Where the auditing methodology adopted is based on a relevant audit standard, it should be reported and documented.
- 3) Information on how to deal with infringements identified with respect to code compliance, i.e. how the monitoring body will enforce relevant sanctions provided for by the code or how the appropriate corrective measures are to be implemented to ensure compliance. In cases that the code member should proceed in implementing corrective measures, information on how the monitoring body will verify this implementation.
- 4) Information on how to produce audit reports, what information will be included and what will be their overall management (e.g. members involved in an audit who formulate the final conclusion shall be subject to rules of discretion and confidentiality; it should be clarified under which conditions the outcome of a review will be disclosed to third parties and, if so, what degree of disclosure will be provided, etc.)

Moreover, the monitoring body shall provide evidence of upfront, ad hoc and regular procedures to monitor the compliance of members within a clear time frame, and check eligibility of members prior to joining the code (such as procedures providing for audit plans to be carried out over a definite period).

5. General requirement to establish procedures and structures to handle complaints about infringements of the code or the manner in which the code has been, or is being, implemented, and to make those procedures and structures transparent to data subjects and the public (Article 41(2)(c))

The monitoring body shall have transparent and easily understood procedures in relation to the manner in which a complaint can be made either against a code member or against the body itself. Furthermore, the monitoring body shall demonstrate that it has the necessary resources to smoothly support these procedures. Besides, in the context of transparency in relation to relevant procedures any decision made by the monitoring body shall also be properly made public (as specified below).

The monitoring body shall be able to demonstrate at any time that it has such procedures in writing (whether electronic or not) and that it has taken the necessary steps as described below.

In particular, the monitoring body shall meet the following:

A. Complaints about code members

(a) The monitoring body shall provide evidence of a publicly available, easily understood, transparent and easy to follow process for submitting complaints against code members.

This process shall clarify the minimum information required for a complaint not to be considered as vague or unsubstantiated.

(b) Upon receiving the complaint, the monitoring body shall acknowledge receipt and provide the complainant with a progress report or the outcome of the complaint within a specific time frame not exceeding three months. The body shall demonstrate that appropriate procedures are in place for effective treatment of the complaints. The monitoring body shall contact the complainant in order to give the complainant the opportunity to further substantiate the complaint or fill in the missing information, if needed. Those obligations of the body shall also be explicitly mentioned in the description of the process of complaint submission.

(c) The monitoring body shall take appropriate and effective actions in cases of infringement of the code by a code member. Such actions, being determined by the code, could include appropriate information, issuing a warning, report to the Board of the member, reprimand and/or formal notice requiring specific remedial action without delay, suspension or exclusion from the code. Such actions shall be notified to the complainant, as well as to the code owner.

(d) The monitoring body shall maintain a record of all complaints submitted to it, together with all relevant information regarding the actions taken when considering the complaint, including its final actions. The relevant record file shall be available to the HDPA at any time, upon request.

(e) The monitoring body shall make public the actions it has undertaken as described in point (c) above. Such disclosure does not necessarily imply disclosure of any audit findings or any decision made by the body in its full form. The disclosure should include the necessary information enabling the public to become aware of whether a code member complies with the code or not (e.g. a brief summary of the relevant decision), without including confidential details.

It is pointed out that the above point (e) in case (A) also applies similarly to actions that the monitoring body has performed not only after a received complaint but also after its own motion, within the framework of monitoring the compliance with the code.

B. Complaints against the monitoring body

(a) The monitoring body shall provide evidence of a publicly available, easily understood, transparent and easy to follow process for submitting complaints against decisions it has made or actions it has undertaken.

The monitoring body shall demonstrate that, in case it received such a complaint, it has taken appropriate follow-up actions and provided the complainant in question with relevant information. If, after considering a complaint, the body undertakes a new action or modifies an action already undertaken (e.g. modification of a decision), the above applies mutatis mutandis, as described above in points (c) to (e) in case (A).

(b) The monitoring body should inform the code owner for any such a complaint it receives.

(c) Where a complaint against a monitoring body is submitted to the HDPA, the body shall facilitate the HDPA in conducting all relevant audits.

6. General requirement to inform the competent supervisory authority of its actions in case of infringement of the code by a code member (Article 41(4)) or for a significant change to the body

The monitoring body shall have in place transparent and clear procedures in relation to the manner in which it will inform the HDPA of its actions and the level of detail of the information concerned. Furthermore, the monitoring body shall have in place transparent and clear procedures in relation to the manner in which it will inform the HDPA of substantial changes taking place in the body which lead to the need for reaccreditation (e.g. any change that impacts on the monitoring body's ability to perform its function independently and effectively or would be likely to call into

question its independence, expertise and the absence of any conflict of interests or to adversely affect its full operation).

The above procedures shall be made readily available to the HDPAs.

In particular, the monitoring body shall meet the following:

(a) The monitoring body shall have a clear and transparent procedure in relation to when and how it will inform the HDPAs of its actions. Information provided to the HDPAs shall always be in writing (whether electronic or not).

(b) Where the monitoring body has made a decision to suspend or exclude a member from the code, such information shall be provided to the HDPAs without delay on the body's initiative. In any such case, relevant evidence taken into account by monitoring body towards adopting such a decision (e.g. information outlining details of the infringement, the audit outcome or findings and actions taken) shall be submitted to the HDPAs.

(c) The monitoring body shall at all times be able to provide to the HDPAs aggregate statistical information about the actions taken in order to monitor code compliance by code members as well as the actions taken as a result of such monitoring. To that end, it shall have in place appropriate mechanisms for compiling such statistics without delay. In any case, where the HDPAs requests more detailed information on a case (e.g. audit, complaint handling, etc.) considered by the body, the latter shall without undue delay make this information available to the HDPAs.

(d) Where substantial changes in relation to the structure and functioning of the monitoring body have occurred, which may affect the requirements under which it has been accredited, the monitoring body shall inform the HDPAs without undue delay: to this end, it shall demonstrate that it has in place appropriate procedures for identifying such significant changes in a timely manner. Those procedures shall specify the type of those changes which require the provision of information to the HDPAs so that subsequently the HDPAs considers whether accreditation requirements are still fulfilled.

7. General requirement for periodic review of the code's operation and contribution to its review (Article 41(2)(b))

The monitoring body shall contribute to reviews of the code, as required by the code owner, and properly monitor its operation in order to be able to identify itself whether the code needs to be reviewed. To this end, the monitoring body shall ensure that it has documented plans and procedures to review the operation of the code to ensure that the code remains relevant to the members and continues to adapt to any changes in the application and interpretation of the law and new technological developments which may have impact upon the data processing carried out by its members or the provisions of the code.

To this end, the monitoring body shall meet the following:

(a) The monitoring body shall provide the code owner with a report on the operation of the code, as well as any proposals on the review of the code regularly, at least once a year. This report should contain information such as the dates of the audits, their scope, the identity of the auditees, the audits conclusions, if relevant complaints have been received etc. This does not remove the obligation of the monitoring body to inform the code owner without undue delay if the body establishes that the code needs to be reviewed immediately.

(b) The body shall have specific procedures in place to assess the operation of the code and identify any need to review it.

(c) Where a review of the code affects the monitoring body in any way (e.g. extending the scope of auditing to be targeted by the body), the body shall at any time be able to demonstrate that it has in place appropriate procedures to meet its obligations, and that all of its accreditation requirements are generally fulfilled. Where reviewing the code entails a significant change to the body which may affect the requirements under which it has been accredited, the requirements set out in point (d) of requirement No 6 above shall apply mutatis mutandis.

8. General requirement in terms of the legal status of the body (in relation to those specified in particular in Article 41(4) and in Article 83(4)(c))

The monitoring body (e.g. a limited company, an association, an internal department within the code owner's organisation etc.) shall have the appropriate legal status to perform its tasks in accordance with Article 41 of the GDPR.

Although the monitoring body is by itself a data controller within the meaning of Article 4(7) of the GDPR, the accreditation of a monitoring body does not extend to an assessment of compliance, in its capacity as a controller, with the GDPR. In line with the principle of accountability under the GDPR (Article 5(2)), the monitoring body shall be responsible for, and be able to demonstrate compliance with the GDPR. In case the monitoring body is found at any time not to comply with the GDPR, the HDPa may revoke its accreditation.

The requirements in terms of the nature/status of the body are as follows:

(a) Although there is no specific condition relating to the legal status of the body, the latter shall have detailed documentation in order to demonstrate that it has a legal form enabling it to exercise the powers provided for in Article 41(4) of the GDPR, as well as that the HDPa may impose the sanctions set out in Article 83(4)(c) of the GDPR.

(b) The monitoring body shall have a complete and updated organisational chart. In case of an internal monitoring body, it shall additionally produce a specific description of its connections with the code owner (by providing guarantees of independence as set out above).

(c) The main establishment of the monitoring body shall be within the EEA.

(d) A detailed, complete and updated list of the body's legal representatives as well as a list of contact persons with the HDPa shall be submitted.

The monitoring body shall make this information readily available to the HDPa and submit to the HDPa all supporting documents in Greek (in case of translation, it shall be official). If the code of conduct in question is transnational, then the information should be also provided in English.