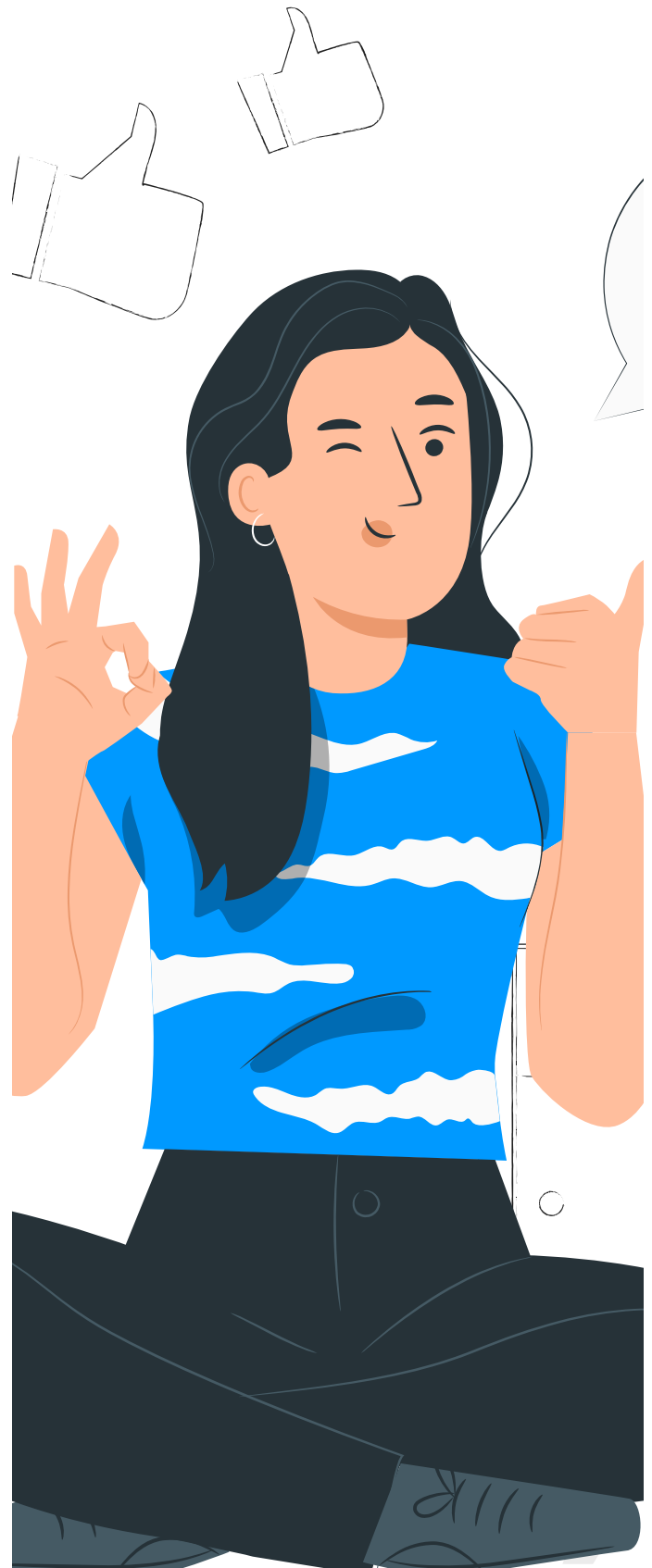


Fact Sheet 3:

The criteria for consent and others bases of lawfulness

The data subject's consent is defined as “any freely given, specific, informed and unambiguous indication of their wishes by which the data subject, by a statement or by a clear affirmative action, consents to the processing of personal data relating to them” (Article 4.1 of the GDPR). To be valid, the consent of the data subject must therefore have different characteristics.

- Consent must be “**free**”. The data subject must have a genuine choice and be able to refuse or withdraw his or her consent without detriment.
- Consent must be “**specific**”. Consent must correspond to a specific and predetermined purpose. Where a processing operation has several purposes, the person must be able to consent to each of them.
- Consent must be “**informed**”. In order for consent to be informed, the data subject must be informed of the identity of the controller and the purposes of the processing for which his or her data are intended. Furthermore, it should be specified in the consent form that **the person has the right to withdraw his or her consent at any time**. The information provided must enable the data subject to understand what will happen to his or her data. To do this, the information should not be “drowned” in general notices.
- Consent must be “**unambiguous**”. Consent must be given unambiguously by a clear affirmative action by which the data subject freely, specifically, informed and unambiguously expresses his or her consent to the processing of data concerning him or her. This **clear affirmative action** may take the form of a written declaration, including by electronic means. This could also be done by ticking a box when visiting a website or by opting for certain technical parameters for online services. **Oral consent** may also be given, provided that the controller can demonstrate that the data subject has consented to the data processing.



Fact Sheet 3:

The criteria for consent and others bases of lawfulness

The 6 bases of lawfulness

1. The data subject has given consent to the processing of his or her personal data for one or more specific purposes.
2. processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract.
3. Processing is necessary for compliance with a legal obligation to which the controller is subject.
4. processing is necessary in order to protect the vital interests of the data subject or of another natural person.
5. Processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller.
6. The processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party, unless the interests or fundamental rights and freedoms of the data subject requiring data protection, in particular where the person concerned is a child.



Examples of non-unambiguous consent:

- The boxes are pre-checked or pre-activated.
- Consent results from the overall acceptance of a contract or terms of use a service.
- Consent is the result of inaction or silence on the part of the data subject or the mere use of a service by the latter (i.e. tacit consent is not recognised as valid, e.g. scrolling).

