

To: Johnny Ryan - ask+request-11346-ab1a9f77@asktheeu.org

Brussels, 27 July 2022

Subject: Your application for access to documents – Ref No 2022/48

Dear Mr Ryan,

We refer to your e-mail dated 27/05/2022 in which you made a request for access to documents. After a further written exchange aiming at clarifying the scope of your request, your request was registered on 05/07/2022 under reference number 2022/48. The deadline to reply is therefore 27/07/2022.

You requested access to:

- “i. the number of cases for each LSA;*
- ii. the number of draft decisions from each LSA;*
- iii. the number of revised draft decisions from each LSA;*
- iv. the number of final decisions from each LSA;*
- v. the number of mutual assistance requests (Article 61) addressed to each LSA;*
- vi. the number of joint operations (Article 62) conducted by each supervisory authority;*
- vii. the number of cases where complaints are marked withdrawn by each LSA (we note supervisory authorities can mark cases closed or withdrawn, according to the IMI User Guide, page 8);*
- viii. the number of cases, where, upon closer inspection, it is concluded by the LSA that the matter does not concern cross-border processing;*
- ix. the number of the number of cases where the issue is handled by a CSA via the derogation to Art 60 provided by Art 56(2)*

x. the number of cases that are informal consultations, for which SAs make use of case register entries for establishing the above mentioned information through these exchanges.

I would be grateful if these numbers could be broken down by month and year. “

On 11/07/2022, you sent the following clarification: “part (v) of my request should include both “mutual assistance” and “voluntary mutual assistance”. ”

Assessment

We have identified one document that falls partially within the scope of your request.

This document contains the most recent statistics available to the EDPB and are cumulative since the establishment of the EDPB on 25 May 2018. We do not hold a document with these statistics broken down by month and year.

The statistics provided have been generated from the information and communications system provided by the EDPB (IMI system) which facilitates the exchange of information between Supervisory Authorities necessary for the functioning of the GDPR cooperation procedures. The system is as well used by the EDPB for the consistency mechanism.

The IMI system is an information sharing tool and not a case management system (as commonly understood). Rather, it is used to create repository entries and initiate workflows by Supervisory Authorities under various headings, which is reflected in the provided statistics.

In that regard the following should be noted:

- references to cases register entries in these statistics do not have a 1-to-1 correlation to the number of cross-border complaints handled per country as multiple complaints may be bundled in one case registers entry which therefore can relate to multiple cross-border cases;
- the statistics relating to Article 60 draft and final decisions only capture the number of cross-border cases resolved by a Supervisory Authority in accordance with the cooperation procedure set forth in Article 60 GDPR.

Depending on the Member State legislation, supervisory authorities may have handled complaints outside of the Art 60 procedure in accordance with their national law (such as amicable resolutions). Only with the adoption of the EDPB work on amicable settlements was a consensus established and all amicable settlements going forward will be registered as Art. 60 Final Decisions.

For the reasons outlined, any requestor may wish to consider to contact a national Supervisory Authority directly to receive figures on the total amount of resolved cases

Please also note that only the Supervisory Authority which initiates a procedure is logged in the system and only one Supervisory Authority can initiate a procedure. This is why, for example, only one Supervisory Authority appears under the statistics for joint operations.

We would also like to provide the following clarifications with regard to the points mentioned below:

- In point iv) of your request, you have asked for the number of final decisions from each LSA. Please note that it is possible that a final decision following a draft decision is adopted by the complaint receiving SA and not the LSA (Art 60(8) GDPR). Therefore, the EDPB does not have statistics that differentiate whether the final decision has been adopted by the LSA or by a complaint receiving SA.
- In point v) of your request, you have asked for the number of mutual assistance requests (Article 61) addressed to each LSA. Please note that we only hold a document which contains statistics on the number of Art 61 requests received per SA and that the EDPB does not take part in the cooperation procedures. Art 61 Mutual Assistance can be used in or outside the context of cross-border processing, i.e. also in cases where no LSA exists. When generating these statistics, we do not filter these on whether an LSA was indicated in the underlying case register and neither whether this is the recipient SA. Further, we cannot differentiate whether the SA was addressed in their role as LSA. Therefore, the numbers reflect all requests for mutual assistance, indifferently of such context.
- As regards point vii) of your request, you have asked for the number of cases where complaints are marked withdrawn by each LSA. You add “(we note supervisory authorities can mark cases closed or withdrawn, according to the IMI User Guide, page 8)”. Please note that this last statement is not correct. The system allows to withdraw any procedure in IMI while the procedure is ongoing, but this is not to be understood as a field where the LSA marks that the complaint has been withdrawn. In regard to this point, the only statistics we hold is the number of Art 56 procedures that were withdrawn.
- As regards point viii) of your request, you have asked for the number of cases, where, upon closer inspection, it is concluded by the LSA that the matter does not concern cross-border processing. Please note that there is no dedicated field for this information, and that this will depend on the individual SA and how they communicate this to the fellow CSAs.
- As regards point ix) of your request, you have asked for the number of cases where the where the issue is handled by a CSA via the derogation to Art 60 provided by Art 56(2). Please bear in mind that the number provided reflects the number of requests to handle the case according to the derogation. The EDPB does not have statistics in how many cases the LSA agreed with the proposal by the CSA.
- As regards point x) of your request, you have asked for the number of cases that are informal consultations, for which SAs make use of case register entries for establishing the above mentioned information through these exchanges. Please note that while the informal consultation can be used for this purpose, without looking into the content of each individual informal consultation, it is not possible to determine what the purpose of the consultation was. Therefore, as the EDPB does not take part in the cooperation procedures, the EDPB does not hold statistics on this specific question.

We have conducted the following assessment in light of Regulation 1049/2001 regarding public access to documents and the relevant case law of the Court of Justice of the European Union (CJEU):

Partial disclosure

Having examined the document requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, alongside the scope of your request, I have come to the conclusion that full disclosure of the document cannot be granted, since some information falls outside the scope of your request.

Disclaimer

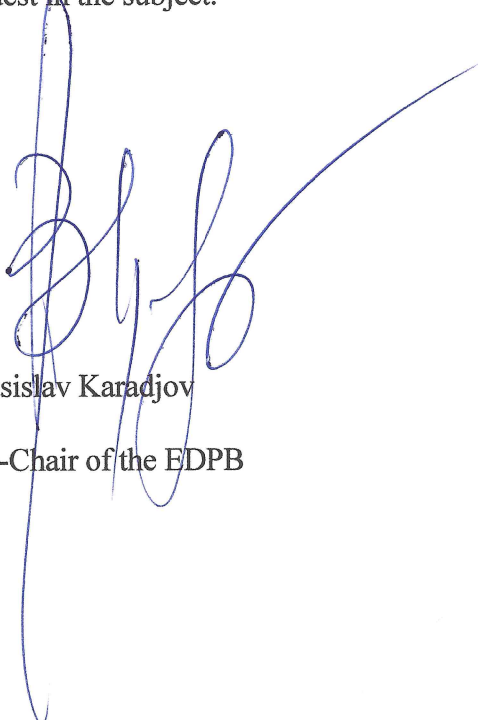
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Means of redress

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the EDPB to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the following email address: edpb@edpb.europa.eu. Please make reference to the case number of your request in the subject.

Yours sincerely,



Ventsislav Karadjov
Vice-Chair of the EDPB