



**Council of the European Union**

General Secretariat

Directorate-General Communication and Information - COMM

Directorate Information and Outreach

Information Services Unit / Transparency

*Head of Unit*

Brussels, 14 March 2022

Mr Heiko Roth

Email: Heiko Roth <[ask+request-10520-15b5b313@asktheeu.org](mailto:ask+request-10520-15b5b313@asktheeu.org)>

Ref. 22/0190-mj-lk/ns

Request made on: 13.01.2022

Deadline extension: 03.02.2022

Dear Mr Roth,

Thank you for your request for access to:

*“documents which contain the following information:*

*1) Indication of whether, which and for what purpose personal data processing services / software of organizations (e.g., as processor / data importer) located outside the EU/EEA are used actually by the Council of the European Union.*

*2) Indication of whether, which and for what purpose such personal data processing services of organizations located within the EU/EEA, but with subcontractors outside the EU/EEA, are actually used by the Council of the European Union.*

*3) Per individual of these services with the aforementioned third country references:*

*a) I request an indication as to whether and which transfers pursuant to Art. 44 et seq. GDPR are triggered by the use of these services.*

*b) I ask for all contracts concluded with the providers of these services in this respect, which are necessary under data protection law, or for a missing indication if there are no such contracts. In particular, namely: contract for commissioned processing according to Art. 28 DSGVO as well as standard data protection clauses according to Art. 46 GDPR.*

*c) I request the provision of the documented "Transfer Impact Assessment" required according to clause 14 of the current standard data protection clause sets of the EU Commission or the documented "Transfer Impact Assessment" required according to Art. 46 (1) GDPR in conjunction with the principles from ECJ judgment "Schrems II" regarding the data transfers associated with the use of such services".<sup>1</sup>*

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<sup>1</sup> The General Secretariat of the Council has examined your request on the basis of the applicable rules: Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43) and the specific

As a preliminary remark, we draw your attention to the fact that the processing of personal data by the Union institutions, bodies, offices and agencies is regulated by Regulation (EU) 2018/1725 and not Regulation (EU) 2016/679 (commonly referred to as GDPR).

The scope of Regulation (EC) No 1049/2001, as defined in its Article 2(3), extends only to existing documents held by an institution, whereas it does not cover the broader concept of information. Information may be distinguished from a document, in particular, as far as it is defined as a data element that may appear in one or multiple documents.

As regards your first two requests, we inform you that we do not hold a document containing the requested information, i.e. a list of actually used processing operations that entail a direct or indirect transfer of personal data to third countries. However, you may obtain the information you have requested by consulting the records contained in the [Council's Public register of records](#). Point 11 of each one of these records refers to possible transfers of personal data to third countries or international organisations by data processing services actually used by the Council.

We invite you to consult the above-mentioned register of records in order to identify one or more individual processing operations with regard to which you would like to request access to certain underlying documents.

On this basis we are closing this request. Please do not hesitate to submit a new request should you identify specific documents which you would like to request public access to.

Yours sincerely,

Fernando FLORINDO

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provisions concerning public access to Council documents set out in Annex II to the Council's Rules of Procedure (Council Decision No 2009/937/EU, OJ L 325, 11.12.2009, p. 35).