



EUROPEAN DATA PROTECTION SUPERVISOR

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Brussels, 21 December 2022  
LCN/TT/vd D(2022) 3076 C 2022-1280  
Please use [edps@edps.europa.eu](mailto:edps@edps.europa.eu) for all  
correspondence

**Subject: Your request for access to documents under Regulation (EC) 1049/2001<sup>1</sup>**

Dear Ms Katz-Duchowski,

On 01.12.2022, you sent an access to documents request to the European Data Protection Supervisor (“EDPS”) based on Regulation (EC) No 1049/2001. On 05.12.2022, we sent you an acknowledgement of receipt for your request also mentioning the deadline in accordance with Article 7(1) of Regulation (EC) 1049/2001.

Your request for access to documents concerns:

- *“the intermediate and final compliance report to EDPS on Court's usage of Cisco Webex and related services, as per EDPS Case 2021-0255 from 31 August 2021, given that the remedy deadline is overdue.*
- *any other reports for each additional similar technologies in use at the Court (Canon, Xerox, Microsoft, Dassault, etc.) that are automatically sending telemetry data outside the institution”.*

After careful assessment of your request, we regret to inform you, that concerning the second point of your request, the EDPS does not hold any documents that would correspond to it.

Please note that in accordance with settled case law of the Court of Justice of the European Union, Regulation No 1049/2001 applies only to existing documents in the institution and

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<sup>1</sup> Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents OJ L145/43

that the EDPS is not under the obligation to create a document, which does not exist, even if that document is based on information already appearing in existing documents<sup>2</sup>.

With regards to the first part of your request, the EDPS has identified the following documents:

	DOC ID	DATE	NAME	SUBJECT
1	COO.6515.100.2.462346	28/02/2022	A(2022) 0754	Case 2021-0255 - Intermediate compliance report on the implementation of the conditions set for the renewal of the authorisation for the use of ad hoc contractual clauses
2	COO.6515.100.3.459813	01/09/2022	A(2022) 3034	Your reference: C 2021-0255 (Cisco ad hoc contractual clauses) - Ares(2022)6074690

The EDPS identified that both documents originated from a third party - The Court of Justice of the European Union (“CJEU”). We have consulted CJEU in accordance with Article 4(4) of Regulation (EC) No 1049/2001 in order to assess whether any of the exceptions in Article 4(1) and (2) would be applicable. CJEU replied that:

*“We have no objection to disclosure with the exception of the following documents forming part of the document “Your reference\_ C 2021-0255 (Cisco ad hoc contractual clauses) - Ares(2022)6074690”:*

- *Annex 1a to Exhibit A (“CISCO WEBEX MEETINGS: Transfers of Personal Data”);*
- *Annex 1b to Exhibit A (“CISCO TECHNICAL ASSISTANCE (TAC) SERVICE DELIVERY: Transfers of Personal Data”);*
- *Exhibit B (“List of Sub-processors”);*
- *Exhibit C (“Information Security Exhibit”);*
- *Exhibit D, Attachment 1 (“WEBEX MEETINGS PRIVACY DATA SHEET”), and*
- *Exhibit D, Attachment 2 (“TAC PRIVACY DATA SHEET”), i.e. pp. 21-100 of the pdf-document.*

*These are documents from Cisco. Article 4(4) of Regulation No 1049/2001 should therefore be applied with Cisco and not with the CJEU”.*

## **EDPS Assessment**

The EDPS has examined specifically both documents in order to assess whether disclosure was possible. Our assessment concluded that their disclosure does not undermine any of the interests protected by Article 4(1)(a), (2) and (3) of Regulation (EC) No 1049/2001.

Furthermore, following the EDPS’s analysis of the identified documents, we have concluded that the annexes of the second document from the table above contain standard wording of the CISCO contracts, which would be accessible publicly. In line with Article 4(4) of Regulation (CE) 1049/2001<sup>3</sup>, the EDPS has decided that it is not necessary to consult CISCO

<sup>2</sup> Judgment of the Court of 11 January 2017 in case C-491/15 P, Typke v Commission

<sup>3</sup> *ibid* Art. 4(4). As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.

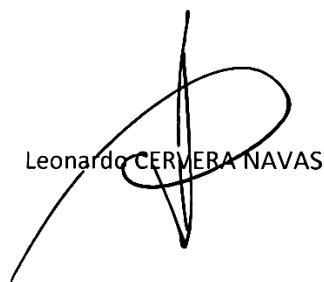
on the document.

The EDPS would like to inform you that you have been granted full access to all documents falling within the scope of your request, with the exception of the personal data of the staff involved in the correspondence, in accordance with Article 4(1)(b) of Regulation (EC) 1049/2001.

## Remedies

Please note that pursuant to Article 7(2) of Regulation (EC) No 1049/2001, you may submit a confirmatory application asking the EDPS to reconsider his position as regards the total or partial refusal of your request. Such a confirmatory application should be submitted within 15 working days upon receipt of this letter to the EDPS general e-mail: [edps@edps.europa.eu](mailto:edps@edps.europa.eu).

Yours sincerely,



Leonardo CERMEIRA NAVAS

Annexes: 2 documents

## Data Protection Notice

*According to Articles 15 and 16 of Regulation (EU) 2018/1725 (the Regulation) on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, we are processing your personal data, where proportionate and necessary, for the purpose of answering your request. The legal base for this processing operation is Regulation (EC) 1049/2001 and Article 52(4) of the Regulation (EU) 2018/1725. Subject to applicable rules under EU legislation, the personal data relating to you, as provided in your request as well as personal data that might be collected while processing your request, are used solely for the purpose of replying to your request. EDPS staff members dealing with the request will have access to the case file containing your personal data on a need-to-know basis. All access to case files is logged. Your personal data are not disclosed outside the EDPS. Your personal data will be stored electronically for a maximum of ten years after the closure of the case, or as long as the EDPS is under a legal obligation to do so. You have the right to access your personal data held by the EDPS and to relevant information concerning how we use it. You have the right to rectify your personal data. Under certain conditions, you have the right to ask that we delete your personal data or restrict its use. We will consider your request, take a decision and communicate it to you. For more information, please see Articles 14 to 21, 23 and 24 of the Regulation. Please note that in some cases restrictions under Article 25 of the Regulation may apply. Any request to exercise your rights should be addressed to the EDPS at [edps@edps.europa.eu](mailto:edps@edps.europa.eu). You may contact the data protection officer of the EDPS ([EDPS-DPO@edps.europa.eu](mailto:EDPS-DPO@edps.europa.eu)), if you have any remarks or complaints regarding the way we process your personal data. You have the right to lodge a complaint with the EDPS, as supervisory authority. Any such request should be addressed to the EDPS at [edps@edps.europa.eu](mailto:edps@edps.europa.eu). You can reach the EDPS in the following ways: E-mail: [edps@edps.europa.eu](mailto:edps@edps.europa.eu); EDPS postal address: European Data Protection Supervisor, Rue Wiertz 60, B-1047 Brussels, Belgium. For*

*more information, please refer to the extended version of the data protection notice available on the EDPS website: [https://edps.europa.eu/data-protection/our-work/publications/other-documents/requests-access-documents\\_en](https://edps.europa.eu/data-protection/our-work/publications/other-documents/requests-access-documents_en).*