



EUROPEAN DATA PROTECTION SUPERVISOR

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Please use edps@edps.europa.eu for all
correspondence

Subject: Your request for access to documents under Regulation (EC) 1049/2001

Dear Mr Roth,

On 23.01.2022, you sent an access to documents request to the European Data Protection Supervisor (“EDPS”) based on Regulation (EC) No 1049/2001, which we registered on the same day. On 26.01.2022, 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. On 11.02.2022 the EDPS informed you that the six access to documents request you sent to us have been put in a queue and will be answered one after the other.

Your request for access to documents concerns documents relating to:

- “a) In 2020 and 2021, how often your authority did exercise the remedial powers provided for under Article 58 (2) Regulation (EU) 2018/1725, thereby countering an unlawful transfer of personal data (imminent) under Articles 44-49 GDPR.
- b) In particular, how often the power under Article 58(2)(j) Regulation (EU) 2018/1725 was exercised in the cases referred to in question a).
- c) Every single (anonymized) decision, resulting from the exercise of the remedial powers named above.”.

The EDPS has identified the following documents falling within the scope of your request:

	DOC ID	DATE	NAME	SUBJECT
1	COO.6515.100.2.433442	07.07.2021	21-07-08+EDPS+Opinion+-+2021-0528 (signed)	EDPS OPINION ON A PRIOR CONSULTATION

The EDPS would like to note that parts of the document falling within the scope of your request originated from a third party, the European Central Bank (“ECB”). We have consulted ECB 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. ECB has indicated that according to their assessment:

“First, the requested document provides information concerning an internet-exposed system serving key representative functions for the ECB by technically supporting the ECB outreach function. Such information is likely to lead to the identification of the system currently in use at the ECB, to highlight its criticality and to provide insights about its security. Considering the functionalities performed by this system, taking into account its envisaged replacement and bearing in mind the tactics usually deployed by cyber attackers, this specific system in its entirety and its individual modules, constitutes a potential initial target and, notwithstanding multiple effective technical security controls currently in place, the single-point of entrance (‘weakest link’) in the ECB information systems and a foothold for a cyber-attack chain. This is especially relevant in the current geopolitical situation that enhances the ECB’s exposure to state-sponsored military-grade cyber-attacks.

Second, disclosure of the document could highlight potential vulnerabilities of the system and the unlawful use of its content could eventually lead to a security breach in the ECB’s IT infrastructure spreading to other systems. As such, it could expose the ECB to cyber-attacks, capable of interfering with the functioning of the ECB, thereby preventing the ECB from carrying out its public tasks in view of maintaining price stability, the stability of the financial system and the integrity of euro banknotes. Therefore, the ECB concludes that disclosure of the document, even partially, would undermine the protection of the public interest as regards the financial, monetary or economic policy of the Union, the integrity of euro banknotes, the stability of the financial system, the Union’s policy regarding prudential supervision of credit institutions.

Third, the Court of Justice has established that public security can be affected by a threat to the functioning of institutions and to essential public services, and that it encompasses situations where public access to documents may obstruct the attempts of authorities to prevent criminal activities. In addition, the Court has acknowledged that the field of information technology is a field that is sensitive to public security. As disclosure of the document could trigger criminal or even state-sponsored military activities targeting the functioning of the ECB, thereby threatening the provision of the essential public services mentioned above (price stability, integrity of banknotes, stability of the financial system), the ECB concludes that disclosure of the document, even partially, would undermine the protection of the public interest as regards public security.”

EDPS Assessment of the documents

Pursuant to our detailed analysis of the document falling within the scope of your request, and taking into account the consultation to the originator of the document, we have concluded that Article 4(1) (a), first indent, of Regulation 1049/2001 (“protection of the public interest as regards of public security”) applies to parts of the requested document. In particular, the document contains information relating to structure, functionalities, processes, access rights, security measures, etc. of an ICT system used by ECB. This information, if disclosed, will seriously threaten the security of ECB day-to-day operations and thus will endanger the proper functioning of the organisation¹. Therefore, we made the following redactions of the document falling within the exception of Article 4(1)(a) first indent, of Regulation 1049/2001:

¹ See judgement in case T-174/95, Svenska Journalistförbundet v Council.

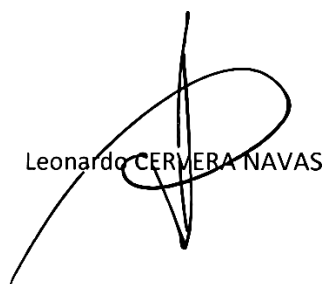
- page 2 - title of section 2.1 - containing description of ECB ITC system.
- page 3 - title of section 2.1 and last paragraph - containing description and structure details of ECB ITC system.
- page 4 - first paragraph and parts of second paragraph - containing security details of ECB ITC system.
- page 4 - paragraphs 3, 4 and 5 - containing security and architecture details of ECB ITC system.
- page 5 - paragraphs 1, 2 and part of 3 - containing architecture and access details of ECB ITC system,
- page 6 - footnote 16 - containing security details of ECB ITC system;
- page 9 - first paragraph - containing details of ECB ITC system.

Furthermore, the EDPS analysis identified that Article 4(2) first indent, of Regulation 1049/2001 (“protection of commercial interests of legal or natural person”) applies to parts of the requested document. In particular, the document contains information relating commercial relations between the ECB and third parties, the disclosure of which will reveal their expertise and proprietary information². The EDPS would like to note that no overriding public interest applies to this part of the document that would allow us to release it. Therefore, we made redaction on page 26, paragraph 3.

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.

Yours sincerely,



Leonardo CERMEBA NAVAS

Annexes: 1 file

² See judgment in case T-718/15, PTC Therapeutics International v European Medicines Agency (EMA)

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. You may contact the data protection officer of the EDPS (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. You can reach the EDPS in the following ways: E-mail: 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.