

Recent case law on privacy and data protection



EDPS-DPO meeting, 12 May 2023

Thomas Zerdick, LL.M.

Head of Unit
„Supervision and Enforcement“,

European Data Protection Supervisor,
Brussels

thomas.zerdick@edps.europa.eu

Case 1

What is the difference between “personal data”, a “copy” and “information”?



Questions (I)

1. Is the term “copy” in Article 15(3) of [the GDPR] to be interpreted as meaning a photocopy, a facsimile or an electronic copy of [an] (electronic) item of data, or does it also cover an “Abschrift”, a “double” (“*duplicata*”) or a “transcript”, in line with the understanding of the term in German, French and English dictionaries?
2. Is the first sentence of Article 15(3) of the GDPR, according to which “the controller shall provide a copy of the personal data undergoing processing”, to be interpreted as affording a general right for a data subject to obtain a copy of – also – entire documents in which the personal data of that data subject are processed, or to receive a copy of a database extract if the personal data are processed in such a database, or does the data subject have a right – only – to an exact reproduction of the personal data about which information is to be provided pursuant to Article 15(1) of the GDPR?
3. In the event that Question 2 is answered to the effect that the data subject has a right only to an exact reproduction of the personal data about which information is to be provided pursuant to Article 15(1) of the GDPR, is the first sentence of Article 15(3) of the GDPR to be interpreted as meaning that, depending on the nature of the data processed (for example in relation to the diagnoses, examination results and assessments mentioned in recital 63 or documents in relation to an examination within the meaning of the judgment of the Court of Justice of 20 December 2017, *Nowak*, C-434/16, EU:C:2017:994) and the transparency requirement in Article 12(1) of the GDPR, it may nevertheless be necessary in individual cases to make text passages or entire documents available to the data subject?

Questions (II)

4. Is the term “information” which, pursuant to the third sentence of Article 15(3) of the GDPR, “where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, ... shall be provided in a commonly used electronic form”, to be interpreted as referring solely to the “personal data undergoing processing” mentioned in the first sentence of Article 15(3) of the GDPR?
4. (a) If Question 4 is answered in the negative: Is the term “information” which, pursuant to the third sentence of Article 15(3) of the GDPR, “where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, ... shall be provided in a commonly used electronic form” to be interpreted as also referring to the information pursuant to Article 15(1)(a) to (h) of the GDPR?
4. (b) If Question 4a also is answered in the negative: Is the term “information” which, pursuant to the third sentence of Article 15(3) of the GDPR, “where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, ... shall be provided in a commonly used electronic form” to be interpreted as referring, beyond the “personal data undergoing processing” and the information pursuant to Article 15(1)(a) to (h) of the GDPR, to associated metadata, for example?

Questions (III)

- **1,2,3:** whether the first sentence of Article 15(3) of the GDPR, read in the light of the transparency requirement laid down in Article 12(1) of that regulation, must be interpreted as meaning that the right to obtain a copy of the personal data undergoing processing means that the data subject must be given not only a copy of those data, but also a copy of extracts from documents or even entire documents or extracts from databases which contain, inter alia, those data.
- **4:** whether the third sentence of Article 15(3) of the GDPR must be interpreted as meaning that the concept of 'information' to which it refers relates exclusively to the personal data of which the controller must provide a copy pursuant to the first sentence of that paragraph, or whether it also refers to all the information referred to in paragraph 1 of that article, or even covers elements going beyond that information, such as metadata.

Case C-487/21 , FF v. Österreichische Datenschutzbehörde

1. The first sentence of Article 15(3) of Regulation (EU) 2016/679 must be interpreted as meaning that the right to obtain from the controller a **copy of the personal data undergoing processing** means that the data subject must be given a **faithful and intelligible reproduction of all those data**.

That right entails the right to obtain **copies of extracts from documents or even entire documents or extracts from databases** which contain, inter alia, those data, if the provision of such a copy is essential in order to enable the data subject to exercise effectively the rights conferred on him or her by that regulation, bearing in mind that account must be taken, in that regard, of the rights and freedoms of others.

2. The third sentence of Article 15(3) of Regulation 2016/679 must be interpreted as meaning that the concept of '**information**' to which it refers **relates exclusively to the personal data** of which the controller must provide a copy pursuant to the first sentence of that paragraph.

GDPR = EUDPR

GDPR

Article 15

Right of access by the data subject

1. The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information: (...)
2. (...)
3. The controller shall provide a copy of the personal data undergoing processing. For any further copies requested by the data subject, the controller may charge a reasonable fee based on administrative costs. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.
4. The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

EUDPR

Article 17

Right of access by the data subject

1. The data subject shall have the right to obtain from the controller confirmation as to whether or not personal data concerning him or her are being processed, and, where that is the case, access to the personal data and the following information: (...)
2. (...)
3. The controller shall provide a copy of the personal data undergoing processing. Where the data subject makes the request by electronic means, and unless otherwise requested by the data subject, the information shall be provided in a commonly used electronic form.
4. The right to obtain a copy referred to in paragraph 3 shall not adversely affect the rights and freedoms of others.

Case 2

How does data protection compensation work?



Questions

1. Does the award of **compensation** under Article 82 of [the GDPR] also require, in addition to infringement of provisions of the GDPR, that an applicant must have suffered **harm**, or **is the infringement of provisions of the GDPR in itself sufficient for the award of compensation?**
2. Does the assessment of the compensation depend on further EU-law requirements in addition to the principles of effectiveness and equivalence?
3. Is it compatible with EU law to take the view that the award of compensation for non- material damage presupposes the **existence of a consequence [or effect] of the infringement of at least some weight that goes beyond the upset caused by that infringement?**

C-300/21, UI v. Österreichische Post

1. Article 82(1) of Regulation (EU) 2016/679 must be interpreted as meaning that **the mere infringement** of the provisions of that regulation is **not sufficient** to confer a right to compensation.
2. Article 82(1) of Regulation 2016/679 must be interpreted as precluding a national rule or practice which makes compensation for non-material damage, within the meaning of that provision, subject to the condition that the damage suffered by the data subject has reached a certain degree of seriousness.
3. Article 82 of Regulation 2016/679 must be interpreted as meaning that for the purposes of determining **the amount of damages payable under the right to compensation** enshrined in that article, national courts must apply the **domestic rules** of each Member State relating to the extent of financial compensation, provided that the principles of **equivalence and effectiveness of EU law** are complied with.

GDPR = EUDPR

GDPR

Article 82

Right to compensation and liability

1. Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the controller or processor for the damage suffered.
2. Any controller involved in processing shall be liable for the damage caused by processing which infringes this Regulation. A processor shall be liable for the damage caused by processing only where it has not complied with obligations of this Regulation specifically directed to processors or where it has acted outside or contrary to lawful instructions of the controller.
3. A controller or processor shall be exempt from liability under paragraph 2 if it proves that it is not in any way responsible for the event giving rise to the damage.
4. Where more than one controller or processor, or both a controller and a processor, are involved in the same processing and where they are, under paragraphs 2 and 3, responsible for any damage caused by processing, each controller or processor shall be held liable for the entire damage in order to ensure effective compensation of the data subject.
5. Where a controller or processor has, in accordance with paragraph 4, paid full compensation for the damage suffered, that controller or processor shall be entitled to claim back from the other controllers or processors involved in the same processing that part of the compensation corresponding to their part of responsibility for the damage, in accordance with the conditions set out in paragraph 2.
6. Court proceedings for exercising the right to receive compensation shall be brought before the courts competent under the law of the Member State referred to in Article 79(2).

EUDPR

Article 65

Right to compensation

Any person who has suffered material or non-material damage as a result of an infringement of this Regulation shall have the right to receive compensation from the Union institution or body for the damage suffered, subject to the conditions provided for in the Treaties.

Data protection rulings 12/2022-5/2023



Data protection rulings 12/2022-5/2023 (I)

Case	Date	Parties	Object
<u>C-460/20</u>	08/12/2022	Google (de-referencing)	GDPR: Article 17(3)(a); Articles 7, 8, 11 and 16 of the Charter – Obligations and responsibilities of the operator of the search engine in respect of processing a request for de-referencing – Burden of proof on the person requesting de-referencing
<u>C-180/21</u>	08/12/2022	Inspektor v Inspektorata kam Visshia sadeben savet	GDPR: Articles 2, 4 and 6 – Concept of ‘legitimate interest’ – Concept of ‘task carried out in the public interest or in the exercise of official authority’ – LED: Articles 1, 3, 4, 6 and 9 – Lawfulness of the processing of personal data collected in the course of a criminal investigation – Subsequent processing of data relating to a presumed victim of a criminal offence for the purpose of making a formal accusation in respect of him or her – Concept of purpose ‘other than that for which the personal data are collected’
<u>C-132/21</u>	12/01/2023	Budapesti Elektromos Művek	GDPR: Articles 77 to 79 – Remedies – Parallel exercise – Relationship- Article 47 of the Charter of Fundamental Rights of the European Union

Data protection rulings 12/2022-5/2023 (II)

Case	Date	Parties	Object
<u>C-154/21</u>	12/01/2023	Österreichische Post	GDPR: Article 15(1)(c) – Data subject’s right of access to his or her data – Information about the recipients or categories of recipient to whom the personal data have been or will be disclosed – Restrictions
<u>C-205/21</u>	26/01/2023	Ministerstvo na vatreshnite raboti, Glavna direktsia za borba s organiziranata prestapnost	LED: Article 4(1)(a) to (c) – Principles relating to processing of personal data – Purpose limitation – Data minimisation – Article 6(a) – Clear distinction between personal data of different categories of data subjects – Article 8 – Lawfulness of processing – Article 10 – Processing of biometric data and genetic data – Concept of ‘processing authorised by Member State law’ – Concept of ‘strictly necessary’ – Charter of Fundamental Rights of the European Union – Articles 7, 8, 47, 48 and 52 – Right to effective judicial protection – Presumption of innocence – Limitation – Intentional criminal offence subject to public prosecution – Accused persons – Collection of photographic and dactyloscopic data in order for them to be entered in a record and taking of a biological sample for the purpose of creating a DNA profile

Data protection rulings 12/2022-5/2023 (III)

Case	Date	Parties	Object
C-453/21	09/02/2023	X-FAB Dresden	GDPR: Article 38(3) – Data protection officer – Prohibition on dismissing data protection officer for performing his or her tasks – Requirement for functional independence – National legislation prohibiting the dismissal of a data protection officer without just cause – Article 38(6) – Conflict of interests – Criteria – “a DPO cannot be entrusted with tasks or duties which would result in him or her determining the objectives and methods of processing personal data on the part of the controller or its processor.”
C-560/21	09/02/2023	KISA	GDPR: Article 38(3) – Data protection officer – Prohibition on dismissing data protection officer for performing his or her tasks – Requirement for functional independence – National legislation prohibiting the dismissal of a data protection officer without just cause
C-268/21	02/03/2023	Norra Stockholm Bygg	GDPR: Article 6(3) and (4) – Lawfulness of processing – Production of a document containing personal data in civil court proceedings – Article 23(1)(f) and (j) – Protection of judicial independence and judicial proceedings – Article 5 – Minimisation of personal data – Charter: Articles 7, 8, 47

Data protection rulings 12/2022-5/2023 (IV)

Case	Date	Parties	Object
<u>C-34/21</u>	30/03/2023	Hauptpersonalrat der Lehrerinnen und Lehrer	GDPR: Article 88(1) and (2) – Processing of data in the employment context – Teaching by videoconference as a result of the COVID-19 pandemic – Implementation without the express consent of the teachers
<u>C-300/21</u>	04/05/2023	Österreichische Post	GDPR: Article 82(1) – Right to compensation for damage caused by data processing that infringes the regulation – Conditions governing the right to compensation – Mere infringement of that regulation not sufficient – Need for damage caused by that infringement – Compensation for non-material damage resulting from such processing – Incompatibility of a national rule making compensation for such damage subject to the exceeding of a threshold of seriousness – Rules for the determination of damages by national courts
<u>C-487/21</u>	04/05/2023	Österreichische Datenschutzbehörde	GDPR: Data subject's right of access to his or her data undergoing processing – Article 15(3) – Provision of a copy of the data – Concept of 'copy' – Concept of 'information'

Data protection rulings 12/2022-5/2023 (V)

Case	Date	Parties	Object
<u>C-60/22</u>	04/05/2023	Bundesrepublik Deutschland	GDPR: Article 5 – Principles relating to processing – Controllership – Article 6 – Lawfulness of processing – Electronic file compiled by an administrative authority relating to an asylum application – Transmission to the competent national court via an electronic mailbox – Infringement of Articles 26 and 30 – No arrangement determining joint responsibility for processing and maintaining the record of processing activities – Consequences – Article 17(1) – Right to erasure ('right to be forgotten') – Article 18(1) – Right to restriction of processing – Concept of 'unlawful processing' – Taking into account of the electronic file by a national court – Absence of consent of the data subject
<u>T-557/20</u>	26/04/2023	SRB v EDPS	EUDPR: Article 15(1)(d) - Concept of personal data – Article 3(1) – Right of access to the file

Sneak preview 2023



Pending 2023

Case	Date	Parties	Object
<u>C-340/21</u>	AG opinion: 04/05/2023	Natsionalna agentsia za prihodite	GDPR: Unlawful access to personal data by third parties leads to liability for presumed fault on the part of the controller and may give rise to non-material damage for which compensation can be awarded
<u>C-683/21</u>	AG opinion: 04/05/2023	Nacionalinis visuomenės sveikatos centras	GDPR: Article 4(7) – Concept of ‘controller’ – Development of a mobile application in the context of the COVID-19 pandemic – Responsibility of the public authority in charge of organising the tendering procedure for the acquisition of the mobile application – Article 4(2) – Concept of ‘processing’ – Use of personal data during the test phase of a mobile application – Article 26(1) – Joint control – Article 83 – Imposition of administrative fines – Conditions – Need for the infringement to be deliberate or negligent – Responsibility of the controller for the processing of personal data undertaken by a processor

Contact & questions



Thomas Zerdick, LL.M

thomas.zerdick@edps.europa.eu

LinkedIn:

www.linkedin.com/in/thomaszerdick

Mastodon:

<https://eupolicy.social/@Tzerdick>

Twitter:

@tzerdick