

## THE CJEU SPECIFIES THE SCOPE OF THE RIGHT OF ACCESS TO PERSONAL DATA OF ART. 15 GDPR

**Court of Justice, First Chamber, of May 4, 2023 (C-487/2021)\***

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### I. PREVIOUS CONSIDERATIONS

The judgment of the Court of Justice of the European Union (CJEU), issued on May 4, 2023, pronounces on the content and scope of the right of access of the interested party to their personal data subject to processing, regulated in art. 15 of Regulation (EU) 2016/679 of the European Parliament and of the Council, of April 27, 2016, regarding the protection of natural persons with regard to the processing of personal data and the free circulation of these data (RGPD).

The aforementioned precept enshrines the right of every citizen to be informed by those responsible for data processing if they are processing personal information that concerns them and, in the event of an affirmative answer, what that data is and how it is being processed.

Notably, art. 15.1 GDPR provides that the interested party has the right to obtain from the data controller confirmation whether or not personal data -concerning him or her- is being processed and, where appropriate, to access the following information:

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- Purposes of the treatment: the reasons for which the personal data is collected.
- Categories of personal data.
- Recipients or categories of recipients: who are the data processors and who has access to the data.
- If possible, the period of conservation of the personal data: the time that the information will remain in the files of the person in charge and/or the recipient, as well as the criteria followed to determine the abovementioned period.
- Existence of the right to rectify, delete, limit or oppose the processing of personal data.
- Right to file a claim with the control authority.
- Information available on the origin of the data, when it has not been obtained from the interested party.
- Existence of automated decisions, including profiling and the consequences that such processing could have for the interested party.

In addition, the third section of the article provides that the rights granted by access are not limited to mere consultation, but that the interested party has the right to receive a copy of their personal information and that in the event of the request is submitted by electronic means, it should be obtained it by the same means, unless otherwise expressly requested.

Finally, the fourth paragraph states that the right of the interested party to obtain a copy of their personal data will not negatively affect the rights and freedoms of others.

Basically, the CJEU ruling pronounces on the scope, content and mode of execution of the right of the interested party to receive a copy of their personal information, enshrined in the aforementioned third section of art. 15 GDPR.

In our internal legal system, the right of access to personal data is regulated in article 13 of the LOPDGDD, which refers directly to those exposed in the RGPD, indicating that "the right of access of the affected party will be exercised in accordance with the provisions of Article 15 of Regulation (EU) 2016/679".

## **II. FACTS AND PROCESS**

The litigation that motivates the request for a preliminary ruling originated when F.F. (owner of some data) requested CRIF (business advisory agency that provides, at the



request of its clients, information on the solvency of third parties) access to the personal data that concerned him. Moreover, he asked to be provided with a copy of the emails and database extracts, which contained his data, "in a usual technical format."

Responding to this request, CRIF sent the applicant (appellant in the main proceedings) in summary form the list of his personal data subject to processing.

When considering F.F. that CRIF should have sent him a copy of all documents containing his data (such as emails and database extracts), F.F. filed a complaint with the Österreichische Datenschutzbehörde (Austrian Data Protection Authority). This authority dismissed the claim, considering that CRIF had not infringed the right of access to the personal data of the appellant in the main proceedings.

### III. PRELIMINARY QUESTIONS RAISED

The Austrian court (Federal Administrative Court, Austria), hearing the appeal filed by F.F. against the refusal decision adopted by the Austrian Data Protection Authority, questions whether the obligation established in article 15, paragraph 3, first sentence, of the GDPR to provide the interested party with a "copy" of their personal data subject to treatment - interpreted as in light of the principle of transparency established in article 12, paragraph 1 GDPR-, is fulfilled when the person responsible for the treatment transmits the personal data in the form of a synthetic table or if it also involves the transmission of extracts of documents, or even entire documents, as well as extracts from databases, in which these data are reproduced.

In addition, the referring court requests clarification as to what is specifically included in the concept of "information" in Article 15(3), third sentence of the GDPR<sup>1</sup>.

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<sup>1</sup> Reproduced verbatim, the questions referred for a preliminary ruling are:

1) The term "copy" that appears in article 15, section 3, of the [GDPR], must be interpreted in the sense that it refers to a photocopy or, where appropriate, a facsimile or an electronic copy of data (electronic) or does it also include, following the definition of that term in the German, French and English dictionaries, an "Abschrift" [(reproduction)], a "double" ("duplicata") or a "transcript"?

2) Article 15, paragraph 3, first sentence, of the GDPR, according to which "the controller shall provide a copy of the personal data subject to processing", should it be interpreted as including a general subjective right of a data subject to provide a copy, including entire documents in which personal data of the data subject is processed, or to provide a copy of an extract from a database in the case of processing of personal data in a database or, on the other hand, does the interested party -only- have a subjective right to obtain an authentic reproduction of the personal data to which they request access pursuant to article 15, paragraph 1, of the GDPR?

3) If the second question referred for a preliminary ruling is answered in the sense that the data subject only has a right to an authentic reproduction of the personal data to which he requests access pursuant to Article 15(1) of the GDPR, Article 15(3), first sentence, [of this] must be interpreted as meaning that, depending on the nature of the data processed [for example, as regards diagnoses, examination results, evaluations,

#### **IV. CJEU DOCTRINE REGARDING THE INTERPRETATION OF ARTICLE 15 OF THE GDPR**

The Court of Justice elaborates its arguments based on the literal, systematic and teleological interpretation of art. 15 GDPR and, in general, of the European regulations<sup>2</sup>.

##### **1. On the scope of the concept of "copy" of the personal data subject to treatment**

The CJUE points out that, although art. 15 GDPR does not contain any definition of the term of "copy", the usual meaning of this term must be taken into account, which designates the authentic reproduction or transcription of an original, so that a purely general description of the data subject to treatment or a referral to categories of personal data would not correspond to this definition.

According to the European Court, the right of the interested party to obtain an authentic reproduction of their personal data, understood in a broad sense, which are the object of operations that must be classified as treatment<sup>3</sup> by the person in charge, includes obtaining copies of extracts of documents, reaching if possible, access to entire documents or extracts from databases. In this regard, the term "copy" does not refer to a document as

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that are mentioned in recital 63 of the GDPR, or also the documentation related to an examination within the meaning of the judgment of the Court of Justice of December 20, 2017, *Nowak* (C-434/16, EU:C:2017:994 ),] and the obligation of transparency of article 12, paragraph 1, of the GDPR, in specific cases it may still be necessary to provide the data subject with excerpts of texts or entire documents?

4) The concept of "information" which, pursuant to article 15, paragraph 3, third sentence, of the GDPR, when the interested party submits the request by electronic means, "will be provided in a commonly used electronic format", "unless that it requests that it be provided in another way", should it be interpreted as referring only to "the personal data subject to processing" that are mentioned in article 15, paragraph 3, first sentence, of the GDPR? a) In the event of a negative response to the fourth question referred for a preliminary ruling: the concept of "information" which, in accordance with article 15, paragraph 3, third sentence, of the GDPR, when the interested party submits the request by electronic means, "will be provided in a commonly used electronic format", "unless the latter requests that it be provided in another way", should this be interpreted as referring also to the information referred to in Article 15, paragraph 1, letters a) to h) , of the GDPR? b) In the event of a negative answer also to letter a) of the fourth question referred for a preliminary ruling: the concept of "information" which, in accordance with article 15, paragraph 3, third sentence, of the GDPR, when the interested party submits the request by electronic, "will be provided in a commonly used electronic format", "unless the latter requests that it be provided in another way", should it be interpreted as referring, in addition to "the personal data subject to processing"? and to the information referred to in Article 15, Paragraph 1, letters a) to h) of the GDPR, also, for example, to the metadata corresponding to those data and information?

<sup>2</sup> See, in this sense, the judgments of 2 December 2021, *Vodafone Kabel Deutschland*, C-484/20, EU:C:2021:975, paragraph 19 and case law cited, and of 7 September 2022, *Staatssecretaris van Justitie in Veiligheid* (Nature of the right of residence under Article 20 TFEU), C-624/20, EU:C:2022:639, paragraph 28.

<sup>3</sup> The art. 4, 2) GDPR defines "processing" as any operation or set of operations performed on personal data or sets of personal data, whether by automated procedures or not.

such, but to the personal data it contains and which must be complete. Therefore, the copy must include all personal data subject to processing.

## **2. On the form of execution of the obligation of the data controller**

The Court of Justice declares that, taking into account the objectives pursued by the right of access of art. 15 GDPR, the copy of the personal data subject to treatment that the person in charge must provide, must present all the characteristics that allow the interested party (i) to make sure that the personal data concerning it are accurate and that they are processed lawfully<sup>4</sup> and (ii) to effectively exercise the rights that correspond it under the GDPR [right of rectification (art. 16), right of deletion (art. 17), right to limitation of treatment (art. 18) right of opposition (art. 21 ), as well as the right to appeal for the damages suffered (art. 79 and 82)<sup>5</sup>] and, therefore, (iii) to fully and authentically reproduce these data.

Bearing in mind the above objectives, the Court of Justice sets out that from recitals 58 and 60 and art. 12. 1 GDPR it follows that the person responsible for the treatment must take the appropriate measures to provide the interested party with all the information indicated in a concise, transparent, intelligible and easily accessible manner, with clear and simple language, and that the information must be provided by written or by other means, including, if applicable, by electronic means, unless it is the interested party who requests that it be provided orally.

In addition, to ensure that the information thus provided is easy to understand, it may be essential to reproduce extracts of documents, or even entire documents, or extracts from databases that contain, among other things, the personal data being processed. In particular, when personal data are generated from other data or when such data result from empty fields, that is to say, where there is an absence of information which provides information about the data subject the context in which such data is processed is an essential element to allow the interested party to have transparent access and an intelligible presentation of these data.

## **3. Conflict between the right of access and other rights of third parties**

In the event of conflict between, on the one hand, exercising the right of full and complete access to personal data and, on the other hand, the rights and freedoms of third parties<sup>6</sup>, a

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<sup>4</sup> See, in this regard, the judgment of January 12, 2023, Österreichische Post (Information regarding recipients of personal data), C-154/21, EU:C:2023:3, paragraph 37 and cited case law.

<sup>5</sup> Judgment of January 12, 2023, Österreichische Post (Information regarding recipients of personal data), C-154/21, EU:C:2023:3, paragraph 38 and cited case law.

<sup>6</sup> Including trade secrets or intellectual property and, in particular, intellectual property rights that protect computer programs (Cdo. 63 GDPR).



balance will have to be struck between the rights in question. In this regard, it points out that whenever possible, modalities of communication of personal data that do not violate the rights or freedoms of third parties must be chosen, taking into account that these considerations should not result in the refusal to provide all the information to the interested party.

#### **4. Concept of "information" that must be provided to the interested party**

On examining what is included in the concept of "information" contemplated in article 15, paragraph 3, third sentence, of the GDPR, the Court holds that, although this provision does not specify what must be understood by "information", it follows from its context that it necessarily corresponds to the personal data of which the controller must provide a copy in accordance with the first sentence of that section ("The controller shall provide a copy of the personal data subject to processing").

The art. 4, 1) GDPR defines the concept of "personal data" as "any information about an identified or identifiable natural person" and specifies that "an identifiable natural person shall be considered any person whose identity can be determined, directly or indirectly, notably by means of an identifier, such as a name, an identification number, location data, an online identifier or one or more elements of the physical, physiological, genetic, psychological, economic, cultural or social identity of the referred person".

The CJEU specifies that the use of the expression "all information" in the definition of the concept of "personal data" of the aforementioned art. 4 GDPR evidences the purpose of the Union legislator to attribute to this concept a very broad meaning, which can include all kinds of information, both objective and subjective, in the form of opinions or appreciations, as long as they are "about" the person in question<sup>7</sup>.

#### **IV. Court decision**

- 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 the GDPR.

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<sup>7</sup> See, by analogy, the judgment of December 20, 2017, Nowak, C-434/16, EU:C:2017:994, paragraph 34.



- It is also underlined the need to take into account, in this regard, the rights and freedoms of third parties.
- The concept of "information" referred to in Article 15, paragraph 3, third sentence, of the GDPR relates exclusively to the personal data of which the controller must provide a copy pursuant to the first sentence of that paragraph.