

From: [REDACTED]
To: [REDACTED] CERVERA NAVAS
Leonardo <leonardo.cerveranavas@edps.europa.eu>
ROSSIGNOL Olivier <olivier.rossignol@edps.europa.eu>;
CC: [REDACTED]
Sent at: 14/11/19 13:05:41
Subject: RE: URGENT: Case 2018-1083: Consultation on EASO
social media monitoring reports (SMM) - reply EASO

I agree with [REDACTED] comments,
Let's publish it as initially planned by Wojciech.

Leo, something to keep in mind for your visit to EASO next week.

From: [REDACTED]
Sent: 14 November 2019 09:12
To: [REDACTED]
Cc: ROSSIGNOL Olivier <olivier.rossignol@edps.europa.eu>; [REDACTED]
[REDACTED]
Subject: URGENT: Case 2018 1083: Consultation on EASO social media monitoring
reports (SMM) reply EASO
Importance: High

Dear [REDACTED]
For your further instruction, including to I&C.
To me, they have (again) missed their deadline; all points were discussed over the
phone and should not prevent us from publishing this asap. [REDACTED] in cc for the ATD
issue (to me: a straightforward non issue).
Could you please inform Leo / Wojtek?
Best
[REDACTED]
See my comments in red.

From: [REDACTED]
Sent: 14 November 2019 08:59
To: [REDACTED] European Data
Protection Supervisor <EDPS@edps.europa.eu>
Cc: [REDACTED]
Subject: Case 2018 1083: Consultation on EASO social media monitoring
reports (SMM)

Dear colleagues,

Following our phone conversation whereby you have informed us of the EDPS

intention to publish on its website the letter sent to EASO on the 30 September in response to the consultation on EASO's Social Media Monitoring (SMM) project, we would like to make a following observations:

We discussed all these points on the phone. He said he had understood and I gave him a DL of yesterday noon as instructed.

Legal basis This *formal consultation* is in stricto sensu not a prior consultation as per Article 40 of the EUDPR 2018/1725 seeing that at the moment EASO formally consulted the EDPS the activity (and related processing) was already ongoing. We would therefore like to understand under which article of the EUDPR the formal consultation falls, and what the legal basis is for making the document publicly available. Is our understanding correct that the disclosure of the formal consultation would fall under Article 54 of the EDPS Rules of Procedures of 17 December 2012?

Our legal basis is cited in the very letter: formal consultation of the EDPS under Article 57(1)(g) of Regulation (EU) 2018/1725. Their attempt at getting advantages out of consulting us too late is ridiculous.

Extra-contractual liability As per Article 65 of the EUDPR any person who has suffered material or non material damage as a result of an infringement of this Regulation should have the right to receive compensation from the controller or processor for the damage suffered, subject to the conditions provided for in the Treaty (340 TFEU, 'Liability'). Even more, as per the 'Annotated version of the EUDPR' it states that "if there is more than one controller responsible for the purposes and means of the processing (co controllership), each of them is liable for damage caused and for compensating data subjects (see FRA Handbook on European data protection law, p. 106 referring to Art. 82(4) GDPR)". In the letter addressed to EASO dated 30/09/2019 with subject "Formal consultation on EASO's social media monitoring reports (case 2018 1083)" the EDPS seems to imply that EASO has breached data protection due to the absence of a legal basis for the processing operation at hand. Therefore, this situation differs from other prior checking opinion published online where the respective institution did not yet commence the data processing, and therefore, no damage could have yet been generated. EASO is concerned that the disclosure of the letter might potentially expose the Agency to extra contractual liability (Art 340 TFEU and Art 65 of the EUDPR).

If they don't want to be liable for breaches of the law, they should not break it. Just a thought. BTW: They are liable whether we publish or not... And they are trying to establish a very convenient precedent: If we do awful things without legal basis, we better not consult early on, but rather too late and then claim that we'll get exposed.

Access to document Regulation (1049/2001) We would like to understand whether the legal basis for disclosure of documents as per the EUDPR should be reconciled with the Access to documents regulation whereby if access is requested by third parties (e.g NGOs, EU agencies), the provisions of ATD regulation 1049/2001 should be respected? If for example, EASO would be currently in legal proceedings on the matter, could the restriction foreseen in Article 4(2) be applied as to avoid disclosure of the document: "The institutions shall refuse access to a document where disclosure would undermine the protection of: [...] court proceedings and legal advice, [...], unless there is an overriding public interest in disclosure."?

I have not received any ATD request on the letter. I am also blissfully unaware of any pending court case. "Legal advice" under ATD is not ours.

Names in the letter We understand that any personal data mentioned in the letter will be redacted?

His name will be.

Apologies for this reaction past the deadline you mentioned.

Oh well...

Kind regards,

[Redacted signature]



European Asylum Support Office
MTC Block A, Winemakers Wharf, Grand Harbour Valletta, MRS 1917, Malta

[Redacted contact information]

Website: www.easo.europa.eu