

ECJ 22 June 2023, case C-579/21 (Pankki S), Privacy

J.M. – v – Apulaistietosuojavaltuutettu, Pankki S, Finnish case

Summary

While every person has the right to know the date of and reasons for the consultation of his/her personal data, such information does, in principle, not include names of the employees who consulted this information. The ECJ's summary of the case is available on <https://curia.europa.eu/jcms/upload/docs/application/pdf/2023-06/cp230107en.pdf>.

Questions

1. Is Article 15 of the GDPR, read in the light of Article 99(2) of that regulation, applicable to a request for access to the information referred to in the first of those provisions where the processing operations covered by that request were carried out before the date on which that regulation became applicable, but the request was made after that date.
2. Must Article 15(1) of the GDPR be interpreted as meaning that information relating to consultation operations carried out on a data subject's personal data and concerning the dates and purposes of those operations, and the identity of the natural persons who carried out those operations, constitutes information which that data subject is entitled to obtain from the controller under that provision?
3. Is the fact, first, that the controller is engaged in the business of banking and acts within the framework of a regulated activity and, second, that the data subject whose personal data has been processed in his or her capacity as a customer of the controller was also an employee of that controller relevant for the purposes of defining the scope of the right of access conferred on him or her by Article 15(1) of the GDPR?

Ruling

1. Article 15 of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Reg-

ulation), read in the light of Article 99(2) of that regulation, must be interpreted as meaning that it is applicable to a request for access to the information referred to in that provision where the processing operations which that request concerns were carried out before the date on which that regulation became applicable, but the request was submitted after that date.

2. Article 15(1) of Regulation 2016/67 must be interpreted as meaning that information relating to consultation operations carried out on a data subject's personal data and concerning the dates and purposes of those operations constitutes information which that person has the right to obtain from the controller under that provision. On the other hand, that provision does not lay down such a right in respect of information relating to the identity of the employees of that controller who carried out those operations under its authority and in accordance with its instructions, unless that information is essential in order to enable the person concerned effectively to exercise the rights conferred on him or her by that regulation and provided that the rights and freedoms of those employees are taken into account.
3. Article 15(1) of Regulation 2016/679 must be interpreted as meaning that the fact that the controller is engaged in the business of banking and acts within the framework of a regulated activity and that the data subject whose personal data has been processed in his or her capacity as a customer of the controller was also an employee of that controller has, in principle, no effect on the scope of the right of access conferred on that data subject by that provision.

ECJ 22 June 2023, case C-427/21 (ALB FILS Kliniken GmbH), Temporary Agency Work, Employees who transfer/refuse to transfer

LD – v – ALB FILS Kliniken GmbH, German case

Summary

The Temporary Agency Work Directive does not apply to an employee who has used its right of refusal to transfer to another group entity and is consequently permanently assigned from the transferor to the transferee.

Question

Must Article 1(1) and (2) of Directive 2008/104, read in conjunction with Article 3(1)(b) to (e) thereof, be interpreted as meaning that the directive applies to a situation in which, first, the duties performed by a worker are transferred definitively by his or her employer to a third-party undertaking and, second, that worker, whose employment relationship with that employer is maintained on account of the fact that that worker has exercised his or her right to object to the transfer of that employment relationship to that third-party undertaking, may be required, at the request of that employer, to perform, on a permanent basis, the work contractually due for that third-party undertaking and, in that context, be subject to the technical and organisational direction of the latter?

Ruling

Article 1(1) of Directive 2008/104/EC of the European Parliament and of the Council of 19 November 2008 on temporary agency work, read in conjunction with Article 3(1)(b) to (e) thereof, must be interpreted as meaning that that directive does not apply to a situation in which, first, the duties performed by a worker are transferred definitively by his or her employer to a third-party undertaking and, second, that worker, whose employment relationship with that employer is maintained on account of the fact that that worker has exercised his or her right to object to the transfer of that employment relationship to that third-party undertaking, may be required, at the request of that employer, to perform, on a permanent basis, the work contractually due for that third-party undertaking and, in that context, be subject to the technical and organisational direction of the latter.

ECJ 6 July 2023, case C-404/22 (Ethnikos Organismos Pistopoiisis Prosonton & Epangelmatikou Prosanatolismou), Information and Consultation

Ethnikos Organismos Pistopoiisis Prosonton & Epangelmatikou Prosanatolismou (Eoppep) – v – Elliniko Dimosio, Greek case

Summary

Directive 2002/14 also applies to private companies exercising public powers, if they also compete with other market operators. The information and consultation obligation does not apply to changes in post of a small number of interim managers.

Question

1. Must Article 2(a) of Directive 2002/14 be interpreted as meaning that that provision refers to a legal person governed by private law which acts as a legal person governed by public law and exercises public powers whilst also providing, for remuneration, services which are in competition with those provided by market operators?
2. Must Article 4(2)(b) of Directive 2002/14 be interpreted as meaning that the information and consultation obligation laid down therein applies in the event of a change of post for a small number of employees appointed on an interim basis to management roles, where that change is not capable of affecting the situation, structure or probable development of employment within the undertaking concerned, or place employment more generally under threat?

Ruling

1. Article 2(a) of Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the Europe-