

To: Nicholas Lee - [ask+request-10393-3e25a269@asktheeu.org](mailto:ask+request-10393-3e25a269@asktheeu.org)

Brussels, 2 February 2022

**Subject: Your application for access to documents – Ref No 2022-02**

Dear Mr. Lee,

We refer to your email dated 13/12/2021 in which you make a request for access to documents. Following a written exchange to clarify your request, and an informal agreement to delay the registration of this request until your other previous requests had been handled, your request was registered on 13/01/2022. The deadline to reply is therefore 03/02/2022.

You have requested access to *“documents, preparatory documents, and supervisory authority comments which relate to agenda item 3.2.1 of the 58th EDPB meeting held on 14 December 2021.”*

*Agenda item 3.2.1 concerns a “draft model administrative arrangement: administrative cooperation between EU and Supervisory Authorities in third countries”.*

In the written request for clarifications, we have stated that we consider “preparatory document” to be draft versions of the document, minutes and associated info notes to be in scope of such requests.

You have responded that you would like to expand the scope of this request to include “emails, written correspondence, and instant messages (WhatsApp, Telegram, Signal, Slack, Microsoft Teams, etc.)”.

Please note that we have included any document which includes comments of supervisory authorities (such as internal discussion papers, as well as draft versions of these which contain comments) to be in scope of this request.

Please note as well that cover emails which contain no comments, are not included in the scope of this request, while the attachments were considered in scope.

## Assessment

We have identified 51 documents falling fully or partially in the scope of your request.

To facilitate our assessment and your consultation of the files, the titles of the files have been adequately numbered. We will refer to the numbers of each single file in our assessment below.

We have conducted the following assessment in light of Regulation 1049/2001 regarding public access to documents and the relevant case law of the Court of Justice of the European Union (CJEU). Please note that the assessment has been carried out only with regard to the documents or parts thereof falling within the scope of your request.

### 1. Full non-disclosure

Having examined the document requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, alongside the scope of your request, I have come to the conclusion that disclosure of the documents mentioned below cannot be granted, they either fall partially out of scope of your request and/or their disclosure is prevented by the following exception to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001:

#### Documents falling partially out of scope of the request:

Documents: 1, 4, 5, 28, 32, 33, 48

**1. Exception 4(1)(b) (“Privacy and integrity of the individual”).** The documents to which you request access contain personal data, in particular names of data subjects. Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data. The applicable legislation in this field is Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 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, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC. When access is requested to documents containing personal data, Regulation 2018/1725 becomes fully applicable<sup>1</sup>. According to Article 9(1)(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them for a specific purpose in the public interest and the controller considers it proportionate. We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned.

<sup>1</sup> Judgment of the Court of Justice of the European Union of 29 June 2010 in Case C-28/08 P, *Commission/The Bavarian Lager Co. Ltd*, ECR 2010 I-06055. This case concerns the previous Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.



This exception applies to the following documents:

Documents: 7, 11, 15, 24, 32, 38, 43 - 45

**2. Exception 4(3), 1st paragraph.** The documents you seek to obtain contain discussions, views and/or opinions of the EDPB members and/or of its Secretariat concerning decisions that have not yet been taken, and which were drafted for internal use. The disclosure of said discussions, views and/or opinions would prevent the involved parties from contributing to internal discussions in an unrestrained and uncensored manner, thus seriously impairing the quality of the discussions and, ultimately, of the decision-making process of the EDPB. Furthermore, due to the ongoing discussions regarding these documents, their disclosure can lead the public to consider them, and the opinions they contain, as final, which is bound to create confusion about any final views adopted by the Board as a whole. The documents concerned are, in particular, draft versions of the model administrative arrangement, internal papers drafted to facilitate the discussions at the level of the expert subgroups involved, as well as emails and minutes of meetings containing details of the ongoing discussions

This exception applies to the following documents:

Documents: 1-6, 21, 23 - 26, 28, 31-34, 36- 51.

Please note that the application of the exception under Article 4 (3) 1st indent is the one leading to the full non-disclosure of documents also covered by the exception under Article 4 (1) (b). The application of Article 4 (1) (b) alone would have led to a partial disclosure of those documents (redacting all the personal data).

We have considered whether partial access could be granted to the document requested. However, the document is entirely covered by this exception, which is why it is not provided.

The exception laid down in Article 4(3) of Regulation (EC) No 1049/2001 applies unless there is an overriding public interest in disclosure of the document. I have not been able to identify such an interest.

## **2. Partial disclosure**

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, alongside the scope of your request, we have come to the conclusion that full disclosure of the documents mentioned below cannot be granted, as some of the information in the documents falls outside the scope of your request and/or the disclosure of some information is prevented by the following exceptions to the right of access laid down in Article 4 of the Regulation 1049/2001:

Documents falling partially out of scope of the request:

Documents: 8, 9, 13, 17, 19, 22, 27, 29, 30, 35, 37, 39, 41

Secretariat of the European Data Protection Board

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**Exception 4(3), 1st paragraph.** The documents you seek to obtain contain discussions, views and/or opinions of the EDPB members and/or of its Secretariat regarding matters for which a decision has not been taken yet by the EDPB. The disclosure of said discussions, views and/or opinions would prevent the involved parties from contributing to internal discussions in an unrestrained and uncensored manner, thus seriously impairing the quality of the discussions and, ultimately, of the decision-making process of the EDPB. Furthermore, due to the ongoing discussions regarding these documents, their disclosure can lead the public to consider them, and the opinions they contain, as final, which is bound to create confusion about any final views adopted by the Board as a whole. We are therefore disclosing a version of the documents where these references have been redacted.

This exception applies to the following documents:

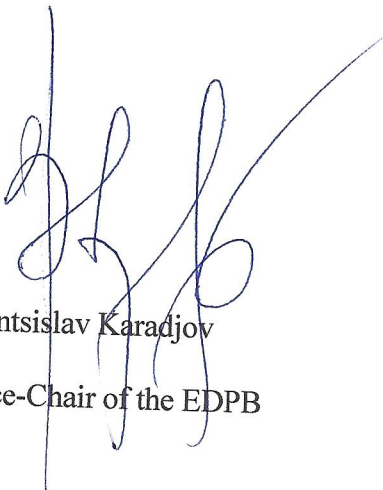
Documents: 9, 17, 19, 30, 35, 37, 39, 41

### **Means of redress**

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the European Data Protection Board to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the following email address: [edpb@edpb.europa.eu](mailto:edpb@edpb.europa.eu). Please make reference to the case number of your request in the subject.

Yours sincerely,



Ventsislav Karadjov  
Vice-Chair of the EDPB