

To: Laura Kayali ask+request-8457-90d5ae11@asktheeu.org

Brussels, 6 October 2020

Subject: Your application for access to documents – Ref No 2020/26

Dear Ms. Kayali,

We refer to your e-mail dated 16/08/2020 in which you made a request for access to documents. After a further written exchange aiming at clarifying the scope of your request, your request was registered on 25/08/2020 under reference number 2020/26.

In accordance with article 7(8) of Regulation 1049/2001, a 15-working day extension of the initial deadline was submitted to you on 15 September 2020. The agreed final deadline for reply to the initial request is therefore 6 October 2020.

You requested access to: “- *All working documents about the taskforce*

- *All documents about the taskforce's composition*

- *All minutes and reports of the task force's meetings*

- *All correspondence including attachments (including any emails, correspondence or telephone call notes) related to the task force.*

- *All working documents prepared for meetings and exchanged in the course of the meetings between the taskforce, the taskforce members and TikTok.*”

Assessment

We have identified a total of 54 documents that fall within 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):

1. Full disclosure:

The following document is already publicly available:

- Document 36

This document has been published on the EDPB website and can be downloaded via the following link: https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_letter_out2020-0053_mep_korner.pdf

2. Full non-disclosure

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

Document falling partially outside the scope of the request:

Document 4

Exceptions applicable under Article 4 Regulation 1049/2001:

1. Exception 4(1)(b) (“Privacy and integrity of the individual”). The documents to which you request access contains personal data, in particular names and contact details 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 applicable¹. 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.

This exception applies to the following documents:

- Documents 4, 7, 8, 11, 15, 16, 17, 18, 21, 22, 25, 26, 27, 28, 30, 31, 32, 33, 38, 39, 40, 41, 42, 46, 48, 49, 50, 51, 54

2. Exception 4(2), 1st indent („commercial interests of a natural or legal person, including intellectual property“). The documents to which you request access contains commercial information, in particular one document contains information which is under copyright and its disclosure would therefore undermine the intellectual property rights of the legal person concerned; the other four documents contain commercially sensitive information relating to the business strategies of the legal persons concerned, or to their commercial relations. Public

¹ 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.

disclosure of these documents would seriously undermine the commercial interests of the legal persons concerned, and for this reason they cannot be disclosed.

This exception applies to the following documents:

- Documents 17, 30, 33, 46, 50

3. Exception 4(3), 1st paragraph: The documents which you seek to obtain refer to internal discussions and opinions related to a matter for which a decision has not been taken yet. This includes discussions, views and internal opinions related to ongoing procedures and for which decisions will still be needed in the future. The documents are thus at a preliminary stage of discussion and any disclosure would constrain the ongoing discussions and seriously limit the necessary decision-making space required by the EDPB. Given that this matter is still subject to discussion and further decisions, the members should be able to freely discuss and decide on them, and explore all possible options in preparation of a decision on this matter, without being subject to external pressure. Any disclosure of such documents is extremely likely, in particular given the nature of the subject, to fuel attempts from external parties to influence the discussions and thus seriously harm the decision-making process of the EDPB. Furthermore, public disclosure of such documents at this stage would seriously impair the quality of the decision-making process, given the confusion which might result from incorrect or unfinished records of the internal deliberations concerned. The documents concerned are, in particular, exchanges of emails and documents between members of the task force, correspondence received by the EDPB and its members, as well as draft working documents related to ongoing work of the task force.

This exception applies to the following documents:

- Documents 25, 27, 28, 30, 31, 32, 33, 38, 40, 41, 42, 46, 48, 49, 50

4. Exception 4(3), 2nd paragraph. The documents which you seek to obtain contain discussions, views and/or opinions of the EDPB members and/or of its Secretariat concerning decisions that have already been taken. Notwithstanding the fact that decisions regarding these documents have already been taken, their disclosure would seriously undermine the decision-making process of the EDPB as it would curtail the Members “space to think”, as it would prevent them from freely submitting their uncensored views on the matter, and freely discussing the issues at stake also in light of their national situations. The disclosure of these opinions will also have consequences in forthcoming discussions, since specific discussions/opinions/views of the EDPB are subject to updates and revisions and can thus be reopened at any time. The documents concerned are, in particular, draft versions of documents prior to their adoption, exchanges of emails and documents between members of the task force prior to a decision being taken, adopted documents related to the mandate of the task force, as well as correspondence received by the EDPB.

This exception applies to the following documents:

- Documents 1, 3, 4, 7, 8, 11, 15, 16, 18, 21, 22, 26, 34, 35, 39, 43, 44, 47, 51, 54

We have considered whether partial access could be granted to these documents. However, the documents are either entirely covered by the one or more of the above-mentioned exceptions, or

the expungement of the information falling under the exception is so significant that it renders the documents irrelevant, which is why they have not been provided.

Finally, we have examined whether there could be an overriding public interest in disclosing the documents, but we have not been able to identify such an interest. For these reasons, access to these documents is denied.

3. 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, I have come to the conclusion that full disclosure of the documents mentioned below cannot be granted, since their disclosure is prevented by the following exceptions to the right of access laid down in Article 4 of Regulation 1049/2001:

1. Exception 4(1)(a), 3rd indent (“International relations”). Disclosure of the redacted parts would reveal the positions taken by the EDPB and other parties in international discussions, which would undermine the protection of international relations.

This exception applies to the following documents:

- Documents 2, 52

2. Exception 4(1)(b) (“Privacy and integrity of the individual”). The following documents to which you request access contain personal data, in particular names and contact details of data subjects, as well as other personal information. 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 applicable². 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. Therefore, we are disclosing a version of the documents requested in which these personal data have been redacted. Please, note that the personal data

² 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.

redacted concern staff members and other private persons, whereas the full names of those holding publicly known positions have been kept.

This exception applies to the following documents:

- Documents 2, 5, 6, 9, 10, 13, 14, 19, 20, 23, 24, 29, 37, 54

In addition, all metadata containing direct or indirect identifiers that would allow for an identification of a specific data subject was removed for the entirety of documents assessed in accordance with the exception mentioned above.

3. Exception 4(3), 1st paragraph. The disclosure of the redacted parts would seriously undermine the decision-making process of the EDPB as they relate to a matter where a decision has not been taken by the Board and contain discussions, views and/or opinions of the EDPB members, of members of its Secretariat or of third parties. The disclosure of said discussions, views and/or opinions would prevent the involved parties of contributing for 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.

Moreover, rapporteurs and taskforce members were redacted in order to avoid unnecessary pressure from external parties regarding the discussions and guidance provided. Rapporteurs and members of the taskforce should be able to discuss the matters free from external pressure and to freely provide their views and feedback on the matter. Thus, it is necessary that they are not subject to external pressure, which would seriously undermine the decision-making process of the EDPB, for the reasons explained.

This exception applies to the following documents:

- Documents 2, 45, 52

4. Exception 4(3), 2nd paragraph. The redacted sections of these documents contain discussions, views and/or opinions of the EDPB members and/or of its Secretariat concerning decisions that have already been taken. Additionally, in some instances those decisions refer to the potential content of documents that are still being developed and which may lead to a revision or update of the specific decisions adopted. Disclosure of such discussions, views and/or opinions would seriously undermine the decision-making process of the EDPB as it would curtail the Members “space to think”, as it would prevent them from freely submitting their uncensored views on the matter, and freely discussing the issues at stake also in light of their national situations. The disclosure of these opinions will also have consequences in forthcoming discussions, since specific discussions/opinions/views of the EDPB are subject to updates and revisions and can thus be reopened at any time.

Finally, rapporteurs and taskforce members were redacted in order to avoid unnecessary pressure from external parties regarding the discussions and guidance provided. Rapporteurs and members of the taskforce should be able to discuss the matters free from external pressure and to freely provide their views and feedback on the matter. Thus, it is necessary that they are not subject to external pressure, which would seriously undermine the decision-making process of the EDPB, for the reasons explained.

This exception applies to the following documents:

- Documents 5, 6, 9, 10, 12, 13, 14, 19, 23, 24, 29, 37, 52, 53

The exceptions laid down in Articles 4(2) and 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. We have not been able to identify such an interest.

Disclaimer

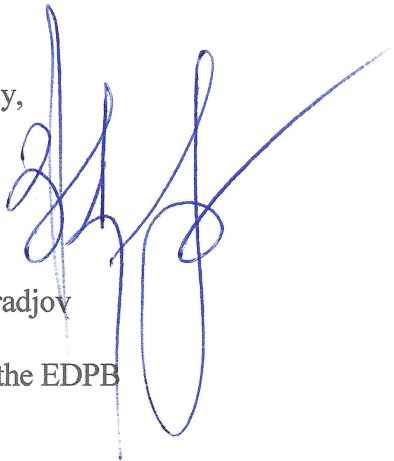
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Means of redress

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the EDPB 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. Please make reference to the case number of your request in the subject.

Yours faithfully,



Ventsislav Karadjov

Vice-Chair of the EDPB