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DIRECTOR

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Please use edps@edps.europa.eu for all
correspondence

Subject: Your request for access to documents under Regulation (EC) 1049/2001

Dear Mr Broenstein,

On 19 November 2020, you sent an access to documents request to the EDPS on the basis of Regulation (EC) 1049/2001, which was registered on the same day also mentioning the extension of the deadline in accordance with Article 7(3) of Regulation (EC) 1049/2001.

You request "to documents held by the EDPS that address the issue of third country (non-EU/EEA) compliance with the European Essential Guarantees, regardless of their nature or origin (see my initial request), especially as the EDPS itself asked EUIs to carry out case-by-case Transfer Impact Assessments (TIAs) in its 'Strategy for Union institutions, offices, bodies and agencies to comply with the 'Schrems II' Ruling' dated 29 October 2020.

In particular, the EDPS required EUIs to decide as to whether it is possible to continue the transfers identified in the mapping exercise and report by 15 November 2020 at the latest, on specific risks and gaps they identified during this mapping exercise (see, page 8 of the abovementioned Strategy).

Furthermore, the EDPS expressly stated it "will provide a list of preliminary questions for EUI controllers" on TIAs (loc. cit.).

I thus kindly request that any such list of questions, expert report, legal opinion, evaluation matrix, checklist or other document on the matter of EEG compliance be provided within the statutory term.

In your earlier communication to EDPS from 13 November 2020 you requested “*Any expert report, legal opinion, evaluation matrix, checklist or other document, of any origin, regardless of its finalization (draft or final), that is available to the Board and that addresses the issue of third country (non-EU/EEA) compliance with the 'European Essential Guarantees', as described in Working Paper 237 (by the former Art. 29 Working Party) and most recently in EDPB Recommendation 02/2020. This request relates in particular to the United States of America, the People's Republic of China, the Federal Republic of India, and any other third country for which documents of the above type are already available.*” Although it refers to documents held by EDPB, which is separate and independent institution, we took into account this request too.

We are pleased to inform you that partial access is granted in line with your request with the exception of access to personal data in line with Article 4(1)(b) of Regulation (EC) 1049/2001 for 38 documents annexed to this letter.

If you would like to request access to the redacted personal data please provide the EDPS with a legitimate justification or compelling argument to demonstrate the necessity for the personal data to be disclosed¹ (see below for information about the confirmatory application).

In addition with the exception of personal data in line with Article 4(1)(b) of Regulation (EC) 1049/2001, partial access is granted to some of these documents based on the following specific reasons:

- disclosure would undermine the protection of public interest as regards public security Article 4(1)(a);
- disclosure would undermine the protection of the purpose of inspections, investigations and audits Article 4(2)(3rd paragraph).

Please be informed that transmission of the documents above to you may have to be done in parts, given the volume of some of the documents.

With regards to your request related to “*Transfer Impact Assessments (TIAs) in its 'Strategy for Union institutions, offices, bodies and agencies to comply with the 'Schrems II' Ruling'*”, we regret to inform you that we cannot provide you with access to any documents, as they are part of ongoing procedure, where the decision is not yet taken by EDPS and thus fall within the exceptions of art. 4(3) of Regulation 1049/2001.

Please note that pursuant to Article 7(2) of Regulation 1049/2001, you may make a confirmatory application asking the EDPS to reconsider his position as regards to the refusal and partial refusal of your request. Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the EDPS general e-mail: edps@edps.europa.eu.

Yours sincerely,


Leonardo CERMEJA NAVAS

¹ In accordance with Article 8(b) of Regulation 45/2001 (current Article 9 of Regulation 2018/1725) as interpreted by the Court of Justice in Case C-28/08 P Bavarian Lager.

Annexes: 38 documents (zip file)

Data Protection Notice

According to Articles 15 and 16 of Regulation (EU) 2018/1725 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, please be aware that your personal data will be processed by the EDPS, where proportionate and necessary, for the purpose of answering your request. The legal base for this processing operation is Regulation (EC) 1049/2001 and Article 52(4) of the Regulation (EU) 2018/1725. Subject to applicable rules under EU legislation, the personal data relating to you, as provided in your request, are used solely for the purpose of replying to your request. EDPS staff members dealing with the request will have access to the case file containing your personal data on a need-to-know basis. Your personal data are not disclosed outside the EDPS. Your personal data will be stored electronically for a maximum of ten years after the closure of the case, or as long as the EDPS is under a legal obligation to do so. You have the right to access your personal data held by the EDPS and to obtain the rectification thereof, if necessary. Any such request should be addressed to the EDPS at edps@edps.europa.eu. You may contact the data protection officer of the EDPS (EDPS-DPO@edps.europa.eu), if you have any remarks or complaints regarding the way we process your personal data.