

To: Johnny Ryan - ask+request-8875-c2c73ddb@asktheeu.org

Brussels, 19 April 2021

Subject: Your application for access to documents – Ref No 2021/03

Dear Mr Ryan,

We refer to your e-mail dated 21/12/2020 in which you made a request for access to documents. Following several written exchanges to clarify the scope of your request, you have clarified that you were requesting access to “all documents related to the dispute mechanism”, i.e. the documents established in the context of the handling of the dispute resolution mechanism which led to the adoption of the EDPB decision 1/2020.

As the number of documents potentially in scope of this request is very large, a phone call between you and the EDPB Secretariat took place on 22/02/2021 in order to agree on a fair solution, in accordance with Article 6 (3) of Regulation 1049/2001.

During this phone call, it was clarified that you were interested in *documents concerning the disagreement among the national supervisory authorities - as expressed, for instance, in the objections submitted by concerned supervisory authorities - that led to the triggering of the dispute resolution mechanism regarding the Irish supervisory authority's draft decision on Twitter Inc.* As this is formally transmitted via the EDPB information and communication system, as opposed to within the text of emails, we have therefore agreed with you that emails will not be included within the scope of this specific request.

Following this agreement, your request was registered on 24/02/2021. In accordance with Article 7(8) of Regulation 1049/2001, a 15-working day extension of the initial deadline was submitted to you on 17/03/2021. The deadline to reply was therefore 12/04/2021. On 09/04/2021, the EDPB Secretariat contacted you to inform that the EDPB anticipated not being able to adhere to the deadline due to the number of documents needed to be assessed and the need to consult national supervisory authorities regarding some of the documents in accordance with Article 4 (5) of Regulation 1049/2001. Your agreement was requested for a further extension of 5 working days, i.e. the final deadline would then be 19/04/2021. The EDPB Secretariat did not receive any response to this request.

Assessment

We have identified a total of 217 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: 118

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_bindingdecision01_2020_en.pdf

The following documents can be fully disclosed:

- Documents: 79, 98, 188, 190, 191, 194, 195, 196, 197

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, since their disclosure is prevented by the following exceptions to the right of access laid down in Article 4 of the Regulation. In addition, some of the documents are also partially out of scope. In this regard, issues of a purely procedural nature were considered out of scope.

Documents partially out of scope: 121, 122

The disclosure of the remaining parts of documents 121 and 122 is prevented by the applicable exceptions, as explained below.

1. 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 applicable¹. According

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

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: 2, 5, 6, 7, 8, 14, 21, 22, 23, 24, 25, 26, 27, 29, 30, 31, 32, 33, 36, 38, 41, 42, 46, 48, 49, 50, 51, 52, 53, 55, 59, 61, 62, 66, 71, 73, 75, 81, 83, 85, 86, 87, 88, 89, 91, 92, 97, 99, 100, 101, 102, 104, 107, 108, 109, 111, 112, 113, 114, 115, 119, 120, 133, 134, 135, 136, 140, 141, 142, 145, 146, 147, 148, 149, 150, 152, 153, 155, 156, 157, 158, 159, 160, 161, 162, 163, 165, 168, 170, 173, 174, 175, 177, 178, 179, 181, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 216, 217

2. 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, its 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. Disclosure of this information would consequently seriously undermine the decision-making process of the EDPB.

The documents concerned are in particular, draft versions of the EDPB decision, with track changes and comments from the individual members, draft versions of meeting minutes, internal preliminary analysis carried out by the EDPB Secretariat and the rest of the drafting team, comments of one member submitted in the context of the drafting of the Article 65 decision and correspondence between one member and the EDPB Chair.

This exception applies to the following documents:

- Documents: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 35, 36, 37, 38, 40, 41, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 70, 71, 72, 73, 74, 75, 76, 77, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217

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.

Secretariat of the European Data Protection Board

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1047 Brussels

Please note that the application of the exception under Article 4 (3) 2nd paragraph is the one leading to the full non-disclosure of the documents also covered by the exception under the Article 4 (1) (b). The application of Article 4 (1) (b) alone would have led to a partial disclosure of those document (redacting all the personal data).

We have considered whether partial access could be granted to these documents. However, the documents are either entirely covered by the above-mentioned exception, or the expungement of the information falling under the exception is so significant that it renders the documents meaningless, which is why they have not been provided.

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

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, we have come to the conclusion that full disclosure of the documents mentioned below cannot be granted, since their full disclosure is prevented by the following exceptions to the right of access laid down in Article 4 of the Regulation. In addition, some of the documents are also partially out of scope. In this regard, issues of a purely procedural nature were considered out of scope.

Documents partially out of scope: 16, 34, 39, 44, 63, 69, 78, 131

Exceptions applicable under Article 4 Regulation 1049/2001:

1. Exception 4(2), 1st indent (“commercial interests of a natural or legal person, including intellectual property”). The document to which you request access contains commercial information regarding a legal person. Public disclosure of this information would seriously undermine the commercial interests of the legal person concerned, and for this reason this part of the document cannot be disclosed.

This exception applies to the following document:

- Document: 39

2. Exception 4(1)(b) (“Privacy and integrity of the individual”). The following document to which you request access contain personal data, in particular names 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 document requested in which these personal data have been redacted.

This exception applies to the following document:

- Document 192, 189

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), 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. Notwithstanding the fact that decisions regarding these documents have already been taken, its 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. Disclosure of this information would consequently seriously undermine the decision-making process of the EDPB.

This exception applies to the following documents:

- Documents 34, 39, 44, 63, 69, 78, 131, 185, 186, 187, 193

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

You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the document/documents. Please note that neither the EDPB, nor its Secretariat assume liability stemming from the reuse.

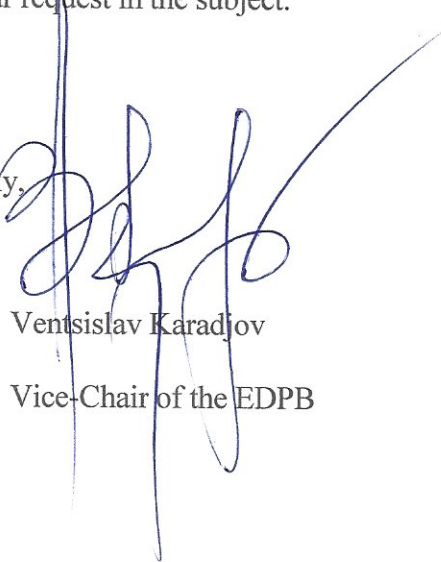
² Judgment of the Court of Justice of the European Union of 29 June 2010 in Case C-28/08 P, *Commission/The Bavarian Lager Co. Ltd*, ECR 2010 I-06055. This case concerns the previous Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.

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