

To: Johnny Ryan - [ask+request-9784-5745b4b5@asktheeu.org](mailto:ask+request-9784-5745b4b5@asktheeu.org)

Brussels, 7 September 2021

**Subject: Your application for access to documents – Ref No 2021-19**

Dear Mr. Ryan,

We refer to your e-mail dated 21/07/2021 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 27/07/2021 under reference number 2021-19.

In accordance with article 7(8) of Regulation 1049/2001, a 15-working day extension of the initial deadline was submitted to you on 17/08/2021. The final deadline for replying to the initial request is therefore 7 September 2021.

You requested access to: *“Final Article 60 decisions between the dates 13 November 2021 and 21 July 2021. Please include the same detail that appears in the online register of final Article 60 decisions. That includes the following summary details.*

1. *Date of decision*
2. *EDPB reference number (example: “EDPBI:DK:OSS:D:2020:151”)*
3. *Main legal reference (example: “Article 32 (Security of processing)”)*
3. *Keywords (example: “Personal data breach”)*
4. *LSA (example: “BE”)*
5. *Outcome (example: “Reprimand”)*

In the written exchange to clarify the scope of your request, you have further stated that you are requesting access to final decisions communicated to the EDPB between the dates of 13 November 2020 and 21 July 2021 in accordance with Article 60(7) GDPR.

**Assessment**

We have identified a total of 94 documents that fall within the scope of your request. Please note that, whereas the documents identified are the final decisions communicated to the EDPB under Article 60(7) GDPR, the summary details mentioned in your request are added in the register of final Article 60 decisions once the decisions are published, and therefore, such information is not necessarily included in the decisions as communicated to the EDPB.

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 of the documents falling within the scope of the request, in light of Regulation (EC) No 1049/2001 and the relevant case law of the CJEU, and after consulting the national supervisory authorities concerned, as per Article 4(5) of such Regulation. The feedback provided by the supervisory authorities has been taken into account in accordance with Regulation 1049/2001 and the case law of the CJEU.

## 1. Full disclosure

The following documents are available on the EDPB website via the links provided below:

Document 18: [https://edpb.europa.eu/system/files/2021-08/debe\\_2021-02\\_right\\_to\\_objet\\_to\\_access\\_to\\_erasure\\_decision\\_redacted.pdf](https://edpb.europa.eu/system/files/2021-08/debe_2021-02_right_to_objet_to_access_to_erasure_decision_redacted.pdf)

Document 19: [https://edpb.europa.eu/system/files/2021-08/debe\\_2021-03\\_personal\\_data\\_breach\\_decisionpublic.pdf](https://edpb.europa.eu/system/files/2021-08/debe_2021-03_personal_data_breach_decisionpublic.pdf)

Document 58: [https://edpb.europa.eu/sites/default/files/decisions/final\\_decision\\_-\\_in-19-1-1\\_9.12.2020.pdf](https://edpb.europa.eu/sites/default/files/decisions/final_decision_-_in-19-1-1_9.12.2020.pdf)

The following documents can be fully disclosed:

Documents: 1, 2, 13, 14, 15, 16, 20, 21, 32, 61, 67, 68, 74, 80, 84

## 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. Their disclosure is prevented by the following exceptions to the right of access laid down in Article 4 of the Regulation, namely:

**1. Exception 4(1)(b) (“Privacy and integrity of the individual”):** The document to which you request access contain personal data, in particular names, signatures or initials 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 to documents containing personal data is requested, Regulation 2018/1725 becomes fully applicable<sup>1</sup>.

---

<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



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 document:

Document: 23

**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 regarding a legal person. Public disclosure of this information would seriously undermine the commercial interests of the legal person concerned, and for this reason the documents cannot be disclosed.

This exception applies to the following documents:

Documents: 23, 63

**3. Exception 4(2), 2nd indent (“court proceedings and legal advice”) in connection with exception 4(2) 3rd indent (“purpose of investigations”):** The document to which you seek access contains a decision against a legal person for which all means of appeal have not yet been exhausted. Consequently, its disclosure would jeopardise the related legal proceedings, thereby undermining the protection of the very purpose of the investigation. According to the national law of this SA, such a decision may only be published once all the possibilities for appeal have been exhausted, the decision is final and a publication would not cause disproportionate damage to the parties involved.

Furthermore, the document contains information obtained during the course of an investigation, as well as information related to the working methods of EDPB members with regard to the cooperation mechanism. Disclosure of that information would undermine the purpose and result of such investigations. Furthermore, the document contains information that could lead to the identification of companies / individuals subject to investigation(s), which could result as this information is not foreseen for public disclosure, in an additional sanction to said elements.

This exception applies to the following document:

Document: 23

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

---

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

rue Wiertz, 60  
1047 Brussels



Please note that the application of the exceptions under Article 4 (2) 1st, 2nd and third indents are the ones leading to the full non-disclosure of the document also covered by the Article 4 (1) (b) exception. The application of Article 4 (1) (b) alone would have led to a partial disclosure of the document (redacting all the personal data).

Finally, we have examined whether there could be an overriding public interest in disclosing these 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, we have come to the conclusion that full disclosure of the documents cannot be granted, as this is prevented by the following exceptions to the right of access laid down in Article 4 of Regulation 1049/2001:

**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, signatures or initials 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 to documents containing personal data is requested, Regulation 2018/1725 becomes fully applicable<sup>2</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. Therefore, we are disclosing a version of the documents requested in which these personal data have been redacted. Please note that the personal 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: 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 17, 24, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 59, 60, 62, 64, 65, 66, 69, 70, 71, 72, 73, 75, 76, 77, 79, 81, 82, 83, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94

---

<sup>2</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.



**2. Exception 4(2) 1st indent (“protection of commercial interests”):** The documents to which you seek to obtain access contain information that could lead to the identification of companies / individuals subject to investigation(s), which could result, in cases where such information may not be foreseen for public disclosure, in an additional sanction to said companies. Additionally, the disclosure of the above-mentioned information, which may contain explanations of the strategies and procedures of companies that are not necessarily made public, could affect the commercial interests of the companies concerned, since it may reveal sensitive information relating to their customer relations and their working methods in a way that has not been envisaged by the company. Therefore, disclosure of such information could undermine the commercial interests of the companies involved. The information redacted includes, but is not limited to, name and contact details of the controller, business model, website, information on security procedures and other elements, since disclosure of such information could lead to identification of the company concerned and/or could harm their commercial interests.

This exception applies to the following documents:

Documents: 3, 5, 6, 7, 8, 9, 10, 12, 17, 22, 24, 25, 26, 29, 30, 31, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 62, 64, 65, 66, 69, 71, 72, 73, 75, 76, 77, 78, 79, 86, 87, 88, 89, 90, 91, 92, 94

**3. Article 4 (3) 2nd paragraph (“decision-making process of the institution”):** The document to which you seek access contains an internal email address used by an SA. This email address has been redacted to prevent its use by the public, since as it is reserved for internal use only and its disclosure would create a disruption of the working arrangements / methods of a member of the Board, which would then seriously undermine the decision-making process of the EDPB.

This exception applies to the following document:

Document: 3

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.

Finally, 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 exception 4(1)(b) mentioned above.

### **Disclaimer**

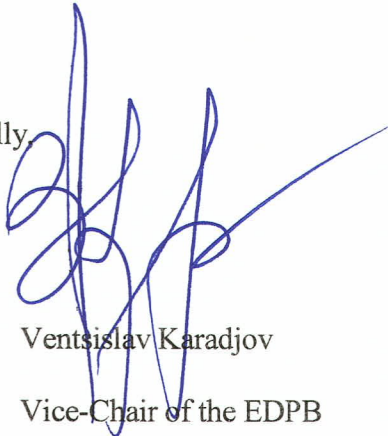
You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the document/documents. Please note that neither the EDPB, nor its Secretariat assume liability stemming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

### 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](mailto: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