

To: Nicholas Lee - [ask+request-10394-5064bdb5@asktheeu.org](mailto:ask+request-10394-5064bdb5@asktheeu.org)

Brussels, 2 February 2022

**Subject: Your application for access to documents – Ref No 2022-03**

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 3.6.3 of the 58th EDPB meeting held on 14 December 2021.”*

*Agenda item 3.6.3 concerns “Access to documents requests concerning legal studies.”*

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.)”.

### **Assessment**

We have identified 13 documents that fall fully or partially within the scope of your present 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 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, as some information in the documents falls outside the scope of your request and/or the information in the documents is prevented by the following exception to the right of access laid down in Article 4 of the Regulation 1049/2001:

Document partially falling outside the scope of this request: 11, 12

**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.

This exception applies to the following documents:

Document: 1-9, 11, 12

**2. Exception 4(3), 2nd paragraph.** The documents which you seek to obtain contain discussions, views and/or opinions of staff members of the EDPB Secretariat, as well as, in some cases, the EDPB Deputy Chair, concerning decisions that have already been taken, and which were drafted for internal use, as part of the preparation for the plenary. 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 EDPB’s Secretariat “space to think”, as it would prevent them from freely submitting their uncensored views on the matter, and freely discussing the issues at stake. The documents concerned are, in particular, draft versions of the info note which is partially disclosed in the context of this request (document 10), some of

<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.



which contain track changes and comments, as well as internal emails exchanged between staff members of the EDPB Secretariat and the Deputy Chair of the EDPB.

This exception applies to the following documents:

Documents: 1-9, 11, 12.

Please note that the application of the exception under Article 4 (3) 2nd 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 documents requested. However, the documents or parts thereof falling within the scope of your request are either entirely covered by the exception(s), or the expungement of the information falling under the exception(s) is so significant that it renders the document irrelevant, which is why they are not provided.

The exception laid down in Article 4(3) of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the documents. We have not been able to identify such an interest. For these reasons, access to these documents is denied.

## 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, 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

**1. Exception 4(1)(b) (“Privacy and integrity of the individual”).** The document contains 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 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

<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.

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, unless consent for the disclosure of personal data has been provided from the data subject concerned.

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

This exception applies to the following documents:

Documents: 13

**2. Exception 4(2), 1st indent (“commercial interests of a natural or legal person, including intellectual property”).** The document contains some unconfirmed statements regarding specific companies. Public disclosure of such statements would seriously undermine the commercial interests of the legal persons concerned, and for this reason they have been redacted.

This exception applies to the following documents:

Document: 13

Please note that the redacted version of document 13 is already available on our website ([https://edpb.europa.eu/system/files/2022-01/legalstudy\\_on\\_government\\_access\\_0.pdf](https://edpb.europa.eu/system/files/2022-01/legalstudy_on_government_access_0.pdf)). Please note that one e-mail address has been replaced in the published version, in order to avoid publication of personal data.

**3. Exception 4(3), 2nd paragraph.** The document which you seek to obtain contain discussions, views and/or opinions of EDPB Secretariat and the EDPB Deputy Chair concerning decisions that have already been taken. Notwithstanding the fact that decisions regarding this document have already been taken, its disclosure would seriously undermine the decision-making process of the EDPB as it would curtail the Members and staff of the Secretariat’s “space to think”, as it would prevent them from freely submitting their uncensored views on the matter, and freely discussing the issues at stake.

This exception applies to the following documents:

Document: 10

The exception laid down in Articles 4(2) and Article 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.

### 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