

Info note



EDPB Plenary meeting, 14 December 2021

ITEM 3.6.3 - 14/12 INFO NOTE - Access to documents and legal studies – Discussion and Decision

I. Background

The EDPB has received a request for access to documents under [Regulation 1049/2001](#), where the applicant has 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 the US or China's compliance with the 'European Essential Guarantees', as described in Working Paper 237 and most recently in Recommendations 02/2020." Among the documents in scope of this request is the recently finalised Legal Study on Government Access on China, India and Russia (hereafter "the document").

The EDPB has so far not published any of the existing legal studies, nor are the topics mentioned in the public version of the plenary minutes. The topics of some legal studies are mentioned on the EDPS website under information related to [public procurement for the contracts awarded](#). Information about contracts awarded in 2021 has not yet been published, therefore the existence of this particular study is not mentioned there.

In this context, it should be mentioned that the legal study on the appropriate safeguards under Article 89(1) GDPR for the processing of personal data for scientific research was in scope of an earlier request, and was partially disclosed (with the personal data of the researchers redacted).

In light of the sensitivity of this particular legal study and the potential impact of its disclosure, it has been decided, together with the deputy Chair, to bring this matter before the plenary for discussion and decision.

II. Current state of play

In accordance with Regulation 1049/2001, access to a document shall only be refused, either totally or partially, if one or more of the exceptions set out in Article 4 apply. Following a

preliminary assessment of the document, **the EDPB Secretariat considers that none of these exceptions would apply to the contents of the document.** [REDACTED]

[REDACTED].

[REDACTED]

Furthermore, the European Court of Justice has found that the risk must be reasonably foreseeable and not purely hypothetical, and be based on a concrete assessment.²

[REDACTED]

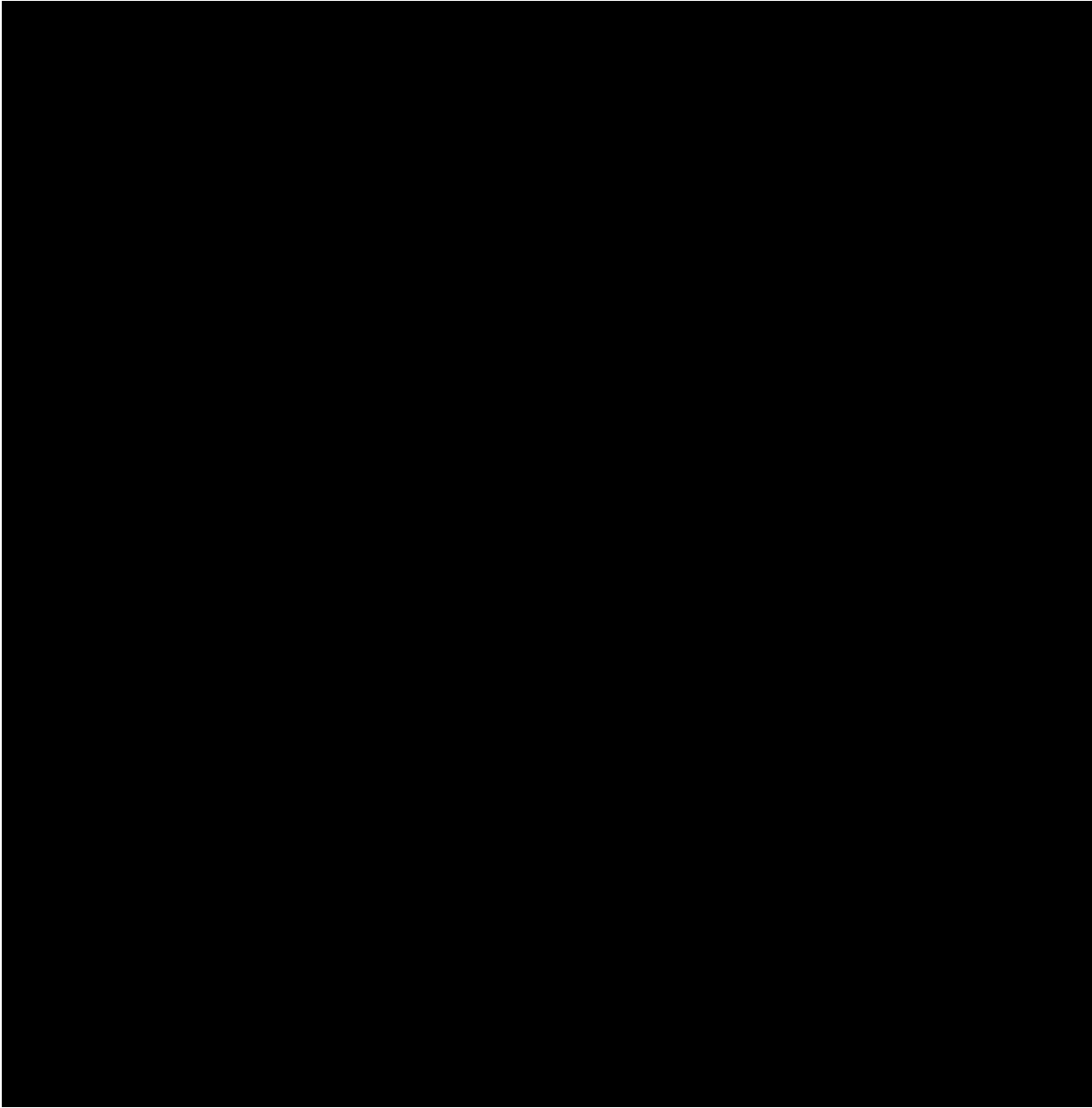
III. Discussion points

1. On the disclosure of the legal study on government access:

[REDACTED]

[REDACTED]

² Council v in 't Veld, C-350/12 P, ECLI:EU:C:2014:2039, paragraph 64.

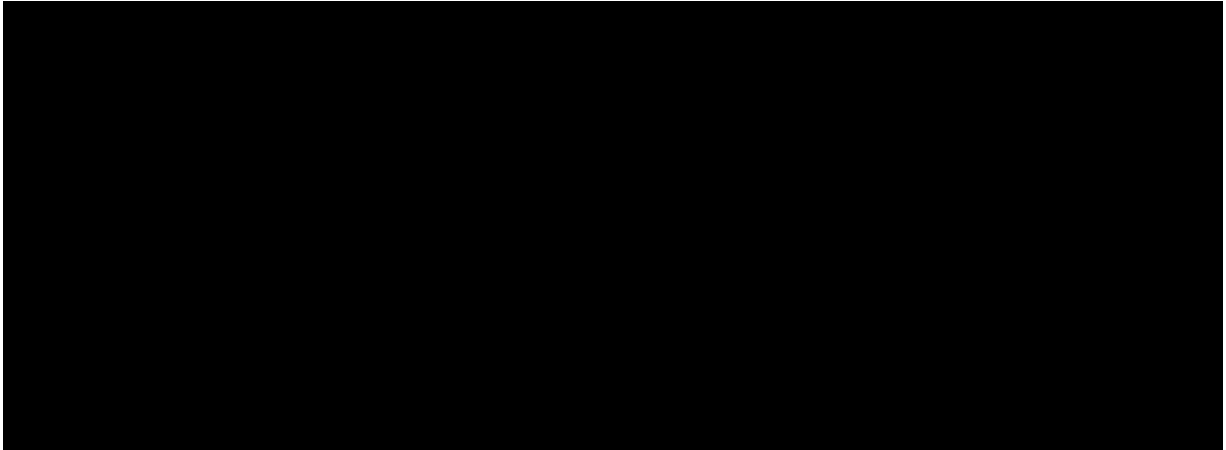


2. Publication of existing and future legal studies

The plenary is requested to consider whether it wishes to change the current approach with regard to the publication of legal studies.

Under Regulation 1049/2001, in principle the EDPB Secretariat considers that there are no grounds to not disclose legal studies in the context of access to documents requests. This means that the transparency principle, for which EU institutions, bodies, and agencies are accountable, would be applied disparately between applicants who will have access to these studies following a request based on their right to access documents, and the general public who do not make such requests, hence will be prevented from access this information. Therefore, the plenary is asked to consider whether to proactively publish the legal studies in order to ensure equal access to these studies.

Request to the Plenary:



2. To decide whether to proactively publish existing and future legal studies

Attachment:

Legal study on government access to data in third countries