

To: Heiko Roth - ask+request-10668-03ed9637@asktheeu.org

Brussels, 4 July 2022

Subject: Your application for access to documents – Ref No 2022/40

Dear Mr. Roth,

We refer to your e-mail dated 29/01/2022 in which you made a request for access to documents. As you made a large number of requests during a short period, you were informed by email on 17, as well as on 26 February 2022, that these requests would be dealt with consecutively, in the order received (as you have not indicated any other preference), as the EDPB Secretariat does not have the resources to handle all of your requests at the same time (also taking into account other requests for access to documents submitted by other applicants), within the legal deadlines foreseen in Regulation 1049/2001.

This specific one was registered on 18/05/2022 under reference number 2022/40, following a written exchange to clarify the scope of your request. The initial deadline for reply was set for 13/06/2022. As your application covered a considerable number of documents (including a very long document) for whose identification and assessment more time was required, as well as due to the high amount of cases currently being dealt with by the EDPB, an extension of deadline was submitted to you on 13/06/2022. The new deadline was set for 04/07/2022.

You have requested access to:

“1 Context of my request:

The "Data Protection Conference" in Germany has published an overview of the participation of German supervisory authorities in subgroups of the EDPB as of 12/2018:

<https://datenschutzkonferenz-online.de/media/misc/subgroups.pdf>. Erwähnt wird dort u.a. eine "International Transfer Subgroup (ITS)".

2 My Requests

2.1 Current overview of all subgroups of the EDPB with a breakdown of which authorities of which EU member state are represented in which subgroup.

2.2 Minutes, opinions, statements and other documents that have been used by the members of the ITS since 16.07.2020 in the context of the work of the ITS.

2.3 Indication of the relationship of the subgroups to the EDPB (e.g. advisory role only)."

As regards point 2.2 of your request, following a written exchange, it has been agreed to limit the scope of this request to "minutes of the ITS meetings in which the interpretation of Art 44-49 GDPR in the context of Schrems II was discussed."

As regards point 2.3 of your request, this has been treated as a request for information, for which a response was sent on 28/02/2022.

Assessment

We have identified a total of 18 documents that fall partially 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):

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, I have come to the conclusion that full disclosure of the documents mentioned below cannot be granted, as they are either partially out of scope of your request, or their disclosure is prevented by the following exceptions to the right of access laid down in Article 4 of Regulation 1049/2001:

Documents falling partially out of scope of your request:

Documents: 1-18

Please note that the documents 1-6, as well as 8 have already been partially disclosed in response to previous requests for access to documents. You are therefore receiving a version of these documents in which previously disclosed sections of these documents are disclosed, even though they may not be in scope of your request. For this reason, some of the disclosed parts of these documents may not be relevant for your specific request.

1. Exception 4(1)(b) ("Privacy and integrity of the individual"). The document to which you request access contains personal data, in particular names and contact details 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 applicable¹. 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 documents:

Document: 18

2. Exception 4(3), 1st paragraph. The disclosure of the redacted parts would seriously undermine the decision-making process of the EDPB as they relate to a matter where a decision has not been taken by the Board and contain discussions, views and/or opinions of the EDPB members. The disclosure of said discussions, views and/or opinions would prevent the involved parties of contributing for internal discussions in an unrestrained and uncensored manner, thus seriously impairing the quality of the discussions and, ultimately, of the decision-making process of the EDPB.

This exception applies to the following documents:

- Documents 5, 9, 12 -17

3. Exception 4(3), 2nd paragraph. The redacted parts 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 matters have already been taken, disclosure of these views 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 also in light of their national situations. The disclosure of these opinions will also have consequences in forthcoming discussions, since specific discussions/opinions/views of the EDPB are subject to updates and revisions and can thus be reopened at any time. Moreover, rapporteurs were redacted in order to avoid unnecessary pressure from external parties regarding the discussions and guidance provided. Rapporteurs should be able to discuss the matters free from external pressure and to freely provide their views and feedback on the matter. Finally, in document 18, references to internal email addresses have been redacted. These have been redacted to prevent their use by the public, since they are reserved for internal use only and their disclosure would create a disruption of the working arrangements / methods of the Board members and/or its Secretariat, which would then seriously undermine the decision-making process of the EDPB.

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 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.

This exception applies to the following documents:

- Documents 3-6, 8, 12, 13, 15, 18

The exceptions laid down in 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

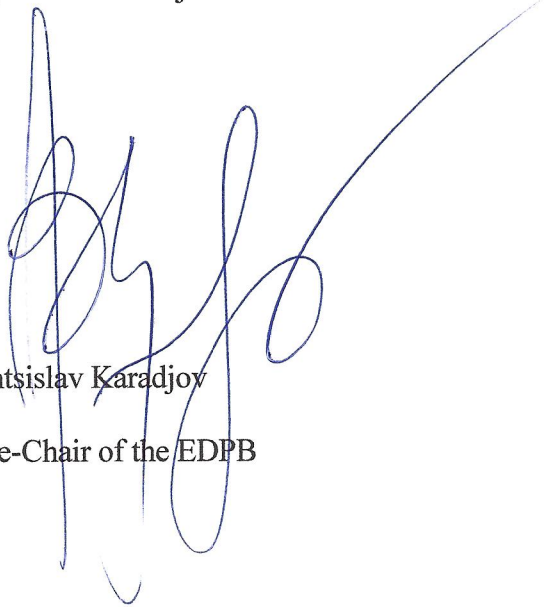
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Means of redress

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 sincerely,



Ventsislav Karadjov
Vice-Chair of the EDPB