

To: Enrique Broenstein - ask+request-10624-73095616@asktheeu.org

Brussels, 17 February 2022

Subject: Your application for access to documents – Ref No 2022-11

Dear Mr. Broenstein,

We refer to your e-mail dated 24/01/2022 in which you make a request for access to documents, registered on 27/01/2022 under reference number 2022-11. The deadline to reply is therefore 17/02/2022.

You have requested access to documents containing the following information: *“The model decision/uniform template for a decision jointly prepared by the EDPB's Cookie Banner Task Force for the 101 NOYB complaints, which, according to the Bavarian State Office for Data Protection, did not reach the majority required to be adopted as a uniform model decision Source: Minutes of the 102nd German Conference of the Data Protection Supervisory Authorities of the Federation and the Länder on 24 and 25 November 2021, available in German,* https://www.datenschutzkonferenz-online.de/media/pr/20211124_protokoll_102_DSK.pdf.”

Assessment

We have identified 1 document that falls within the scope of your request.

From the information you have referenced in your request, we understand that you are referring to a document which was discussed under point 3.2 at the EDPB 57th Plenary. Please note that this point refers to the work of the taskforce set up in September 2020 (“101 Taskforce”) which was set up to look into complaints filed in the aftermath of the CJEU judgment in case C-311/18.

Furthermore, we would like to clarify that the EDPB’s Cookie Banner Taskforce, which is separate from the 101 Taskforce, was not involved in the preparation of the document you refer to in your request.

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).

Full non disclosure

Having examined the document 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 disclosure of the document cannot be granted, due to the application of the following exceptions to the right of access laid down in Article 4 of the Regulation 1049/2001:

Exception 4.2.1st indent (“commercial interests of a natural or legal person”) in connection with exception 4.2.3rd indent (“purpose of investigations”): The document you seek to obtain is a draft decision template prepared by the EDPB 101 taskforce. This document is still under discussion and may be used by supervisory authorities in national investigations, many of which are still ongoing. Disclosure of this document would undermine the purpose and result of such investigations, and also of future investigations carried out by the EDPB members. Furthermore, the document contains information that could lead to the identification of companies / individuals subject to investigation(s), which could result, in cases where such information is not foreseen for public disclosure, in an additional sanction to said elements.

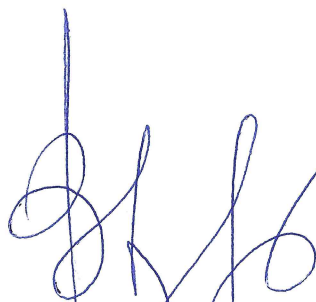
The exceptions laid down in Article 4(2) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the information. We have not been able to identify such an interest.

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. Please make reference to the case number of your request in the subject.

Yours sincerely,


Ventsislav Karadjov
Vice-Chair of the EDPB