To: Rachael Byrne - ask+request-10688-2da7ef52@asktheeu.org

Brussels, 1 March 2022

Subject: Your application for access to documents – Ref No 2022-13

Dear Ms. Byrne,

We refer to your email dated 02/02/2022 in which you make a request for access to documents, which was registered on 08/02/2022. The deadline to reply is therefore 01/03/2022.

You have requested access to “The EDPB internal Article 60 guidelines. These guidelines are mentioned in the agenda of the 59th EDPB Meeting held 18 January 2022, section 2.2”.

Assessment

We have identified 1 document falling in the scope of 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).

1. 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 is prevented by the following exceptions to the right of access laid down in Article 4 of Regulation (EC) No 1049/2001:

1. Exception 4(1)(b) (“Privacy and integrity of the individual”). The document to which you request access contains 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.

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
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.

2. Exception 4(3), 1st paragraph. The disclosure of this document would seriously undermine the decision-making process of the EDPB as it relates to a matter where decisions have not been taken by the Board and contains discussions, views and/or opinions of the EDPB members. The disclosure of said discussions, views and/or opinions would prevent the involved parties from contributing to 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. Furthermore, due to the ongoing discussions regarding this document, its disclosure can lead the public to consider it, and the opinions they contain, as final, which is bound to create confusion about any final views adopted by the Board as a whole. The document concerned is a consolidated, draft version of the internal Article 60 guidelines which has not yet been adopted by the EDPB members and is therefore still subject to change.

Please note that the application of the exception under Article 4 (3) 1st 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 document requested. However, the document is entirely covered by this exception, which is why it is not provided.

The exception laid down in Article 4(3) of Regulation (EC) No 1049/2001 applies unless there is an overriding public interest in disclosure of the document. I 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,

Ventislav Karadjov
Vice-Chair of the EDPB

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.

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