

To: Nicholas Lee - [ask+request-10088-721ed014@asktheeu.org](mailto:ask+request-10088-721ed014@asktheeu.org)

Brussels, 27 June 2022

**Subject: Your application for access to documents – Ref No 2022-36**

Dear Mr. Lee,

We refer to our email dated 11/05/2022 in which we informed you that as a result of a reassessment in the context of your complaint to the European Ombudsman (201/2022/AMF, in relation to EDPB confirmatory decision 2021-33-C), we have established that a number of documents were not assessed, which potentially fall in scope of your request.

We sincerely regret this, which was caused by human error. After consultation with the European Ombudsman, we registered this as a new request on 11/05/2022. The deadline for our reply was originally set for 03/06/2022. Given the large number of documents which had to be identified and assessed, we had to extend the time limit for another 15 working days in accordance with Article 7(3) of Regulation (EC) No 1049/2001 regarding public access to documents. The new deadline was therefore set for 27/06/2022.

In your original request you have asked to access to *“preparatory documents containing national Data Protection Authority statements, questions, opinions, and concerns, leading to the adoption of EDPB documents identified as “04/2021”, “02/2020”, “01/2019”, and “OUT2021-0119” (we understand “preparatory documents” to mean: (i) draft versions of the documents, as well as (ii) minutes of meetings where the documents were discussed);”*

As stated in our initial reply to your request 2021-33, we have additionally considered info notes prepared in advance of plenary meetings, to be part of the preparatory documents and hence in scope of this request.

The documents which were not assessed as part of the initial assessment are preparatory documents regarding the EDPB Statement 1/2019 on the US Foreign Account Tax Compliance Act (FATCA).<sup>1</sup>

We would also like to inform you that as a result of the reassessment in the context of your complaint to the European Ombudsman, we have identified three duplicates, namely documents 11 and 20; documents 2 and 21, and documents 3 and 24. These documents are draft versions of the EDPB Statement 04/2021 on International Agreements including transfers.

<sup>1</sup> [https://edpb.europa.eu/sites/default/files/files/file1/edpb-2019-02-12-25-fatca\\_statement\\_en.pdf](https://edpb.europa.eu/sites/default/files/files/file1/edpb-2019-02-12-25-fatca_statement_en.pdf)

## Assessment

We have identified 9 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 this is prevented by the following exception to the right of access laid down in Article 4 of the Regulation 1049/2001:

**Exception 4(3), 2nd paragraph.** The documents which you seek to obtain 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 documents have already been taken, their disclosure 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 documents concerned are draft versions of the EDPB Statement 01/2019 on the US Foreign Account Tax Compliance Act (FATCA), some of which contain track changes, without any comments.

This exception applies to the following documents:

Documents: 1-4, 6, 9

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, 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:

Documents partially falling outside the scope of this request:

Documents: 5, 7, 8.

Please note that these documents have already been partially disclosed in the context of a previous access to documents request. You are therefore receiving the version of these documents as they were previously disclosed. This may mean that some of the unredacted information in this document may not be relevant to your specific request.

**Exception 4(3), 2nd paragraph.** The documents which you seek to obtain contain references to individual supervisory authorities who acted as rapporteurs. These references have been 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. Disclosing this information 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.

This exception applies to the following documents:

Documents: 5, 8.

In your initial request, you have made reference to the decision of the European Ombudsman in case 386/2021/AMF, stating that any opinions of the National Supervisory Authorities should be included in the response to this request, in an anonymised form if necessary. I must underline that in case 386/2021/AMF, the EDPB decided to revise, to some extent, its confirmatory decision in light of the points raised by the European Ombudsman and of the facts of that specific case, and granted wider access to the applicant. In particular, some comments made by EDPB members were disclosed, as it was deemed that they related to information which was already in the public domain. In no case was the identity of individual SAs disclosed. I must also underline that each request for access to documents is assessed on a case-by-case basis. The decision of the European Ombudsman does not, therefore, set a precedent for the EDPB’s handling of access requests to any of the other documents it holds.

**Disclaimer**

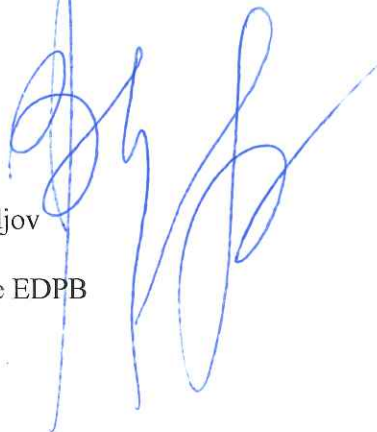
You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the document/documents. Please note that neither the EDPB, nor its Secretariat assume liability stemming 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