

To: Nicholas Lee - [ask+request-10408-974edff0@asktheeu.org](mailto:ask+request-10408-974edff0@asktheeu.org)

Brussels, 18 January 2022

**Subject: Your application for access to documents – Ref No 2021-38**

Dear Mr. Lee,

We refer to your email dated 16/12/2021 in which you make a request for access to documents, which was registered on 17/12/2021. The deadline to reply is therefore 18/01/2022.

You have requested access to “*The draft of letter OUT2021-0119 containing one "sentence underlined in yellow regarding the powers of SAs regarding already validly concluded international agreements" and discussed in the plenary meeting on 7 July 2021.*”

This draft is referenced in this EDPB document:  
[https://www.asktheeu.org/en/request/10088/response/34614/attach/7/Document%2041.pdf?cookie\\_passthrough=1](https://www.asktheeu.org/en/request/10088/response/34614/attach/7/Document%2041.pdf?cookie_passthrough=1)

*Any associated documents (including written comments, forum posts, edits to wikis, etc.) containing discussion or commentary would also be responsive to this request.”*

### 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.

For your information, the final version of the sentence which was highlighted in yellow is “Also to this aim, the above mentioned statement clarifies that national SAs, are available to assist Member States in this exercise, keeping in mind however that Article 46(2).(a) GDPR does not refer to the need for the competent SA to authorise such kind of agreements”. For the sake of

clarity, any document which either contained this sentence, or any discussion of it was included in scope of this 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 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:

Document partially falling outside the scope of this request: 8

**1. 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, in particular, a draft version of the info note which is partially disclosed in the context of this request (document 6), as well as draft versions of the EDPB’s response to MEP Sophie in’t Veld regarding the EDPB’s statement 04/2021 on international agreements including transfers. Some of these drafts contain track changes and comments

This exception applies to the following documents:

Documents: 1-8

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 document falls outside the scope of your request. Please note that this document has already been disclosed in the context of your previous access to documents request

(2021-33-C) and we are therefore disclosing the same version of the document. Some parts of the document may therefore not be relevant for your present request.

Document partially falling outside the scope of this request:

Document: 6

### 3. Full disclosure

The following document is already published on the EDPB website and may be downloaded via the links provided:

Document 9:

[https://edpb.europa.eu/system/files/2021-09/20210707plenfinalminutes\\_51stplenary\\_public\\_0.pdf](https://edpb.europa.eu/system/files/2021-09/20210707plenfinalminutes_51stplenary_public_0.pdf)

### Disclaimer

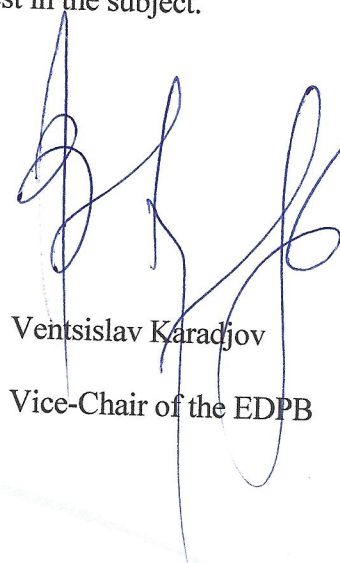
You may reuse the documents requested free of charge for non-commercial and commercial purposes provided that the source is acknowledged and that you do not distort the original meaning or message of the document/documents. Please note that neither the EDPB, nor its Secretariat assume liability stemming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

Secretariat of the European Data Protection Board

rue Wiertz, 60  
1047 Brussels