

To: Johnny Ryan - ask+request-10846-46f91ff6@asktheeu.org

Brussels, 10 May 2022

Subject: Your application for access to documents – Ref No 2022-27

Dear Mr. Ryan,

We refer to your email dated 17/03/2022 in which you make a request for access to documents, registered on 23/03/2022 with registration number 2022-27. The deadline for our reply was originally set for 13/04/2022. Given the large number of documents which had to be identified and assessed, we informed you on 13/04/2022 that 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 10/05/2022.

You have requested access to “*documents that contain any inputs expressed by the Members of the Board, including the Commission and national supervisory authorities, in the discussions about and drafting of EDPB Document 06/2021 on the practical implementation of amicable settlements.*”

This request for documents includes, but is not limited to, different drafts or suggested amendments to this document minutes; notes, whether hand written or typed; e-mails or other correspondence or discussions, including by video or telephone; publications; reports; presentations; and policy papers.

Assessment

We have identified 86 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 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 the Regulation 1049/2001.

Documents falling partially out of scope of the request:

Documents: 85, 86

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

This exception applies to the following documents:

Documents: 1-4, 6 - 19, 21 - 29, 33, 37, 66, 80, 82, 83, 85, 86

2. 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, draft versions of the EDPB Internal Document 06/2021 prior to its adoption, emails containing comments from EDPB members regarding the draft, as well as input for its annex 2, responses from EDPB members to a questionnaire on amicable settlement practices, as well as analysis of these responses.

This exception applies to the following documents:

Documents: 1- 33, 36 - 39, 41 - 59, 66, 82 - 86

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.

Please note that the application of the exception under Article 4 (3) 2nd paragraph 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 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: 35, 40, 61, 62, 64, 65, 67- 72, 75 - 79, 81

Please note that the documents 40, 61, 62, 65, 71, 75, 79 and 82 have already been partially disclosed in the context of a previous access to documents request. You are therefore receiving the version of this document as it was previously disclosed. This may mean that some of the unredacted information in this document may not be relevant to your specific request.

1. Exception 4(1)(b) (“Privacy and integrity of the individual”): The following document to which you request access contain personal data, in particular the name of a data subject. 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 to documents containing personal data is requested, Regulation

2018/1725 becomes fully applicable². 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: 36, 37

2. Exception 4(2), 2nd indent (“court proceedings and legal advice”) in connection with 4 (2) 3rd indent (“purpose of investigations”):

The document to which you seek access contains information regarding ongoing legal proceedings and investigations, as well as information related to the working methods of EDPB members with regard to the cooperation mechanism. Disclosure of that information would undermine the purpose and result of such investigations and proceedings. Therefore, we are disclosing a version of the document requested in which this information has been redacted.

This exception applies to the following documents:

Document: 63

3. 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 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.

This exception applies to the following documents:

Documents: 34, 35, 37, 61-63, 70, 71 - 73, 81

² 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.

3. Full disclosure

The following document is available on the EDPB website and may be downloaded via the link provided.

Document 74: https://edpb.europa.eu/system/files/2022-01/20211118plenfinalminutes57thplenarymeeting_public.pdf

The following document may be fully disclosed:

Documents: 60

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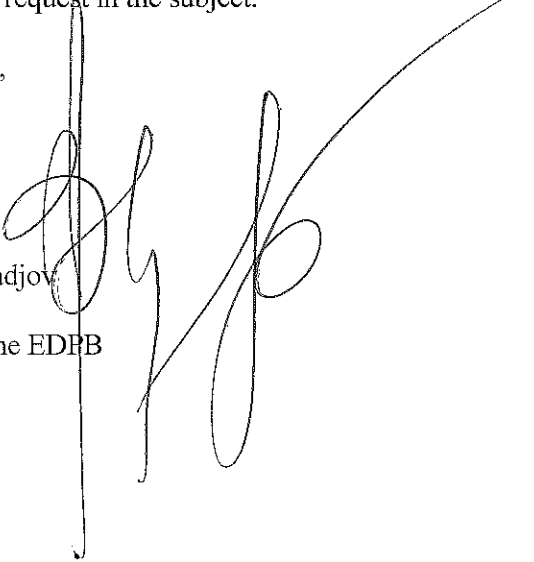
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Means of redress

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the 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