

To: Enrique Broenstein - ask+request-8771-81c18682@askthecu.org

Brussels, 10 December 2020

Subject: Your application for access to documents – Ref No 2020/37

Dear Mr Broenstein,

We refer to your e-mail dated 13/11/2020 in which you made a request for access to documents, registered on 19/11/2020. The deadline to reply is therefore 10/12/2020.

You requested access to: *“Any expert report, legal opinion, evaluation matrix, checklist or other document, of any origin, regardless of its finalization (draft or final), that is available to the Board and that addresses the issue of third country (non-EU/EEA) compliance with the 'European Essential Guarantees', as described in Working Paper 237 and most recently in Recommendations 02/2020. This request relates in particular to the United States of America, the People's Republic of China, the Federal Republic of India, and any other third country for which documents of the above type are already available.”*

Assessment

We have identified a total of 13 documents that fall within the scope of your 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):

1. Full disclosure:

The following document is already publicly available:

- Document: 13

This document has been published on the EDPB website and can be downloaded via the following link:

https://edpb.europa.eu/sites/edpb/files/files/file1/edpbprivacyshield3rdannualreport.pdf_en.pdf

The following document can be fully disclosed:

- Document: 12

2. 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. Their disclosure is prevented by the following exceptions to the right of access laid down in Article 4 of the Regulation:

Exceptions applicable under Article 4 Regulation 1049/2001:

1. Exception 4(1)(b) (“Privacy and integrity of the individual”). The documents to which you request access contain personal data, in particular names and contact details 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: 3, 9, 10.

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 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. The documents concerned are, in particular, internal notes, and draft versions of documents prior to their adoption.

This exception applies to the following documents:

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.

- Documents 2, 3, 4, 5, 6, 7, 8, 9, 10.

We have considered whether partial access could be granted to these documents. However, the documents are either entirely covered by the one or more of the above-mentioned exceptions, or the expungement of the information falling under the exception is so significant that it renders the documents irrelevant, which is why they have not been provided.

The exceptions laid down in Article 4(3) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. We have not been able to identify such an interest.

3. 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, I have come to the conclusion that full disclosure of the document mentioned below cannot be granted, since its disclosure is prevented by the following exception to the right of access laid down in Article 4 of Regulation 1049/2001:

1. Exception 4(1)(b) (“Privacy and integrity of the individual”). The following document to which you request access contain personal data, in particular names and contact details of data subjects, as well as other personal information. 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 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 documents requested in which these personal data have been redacted.

This exception applies to the following document:

- Document 1, 11

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.

In addition, all metadata containing direct or indirect identifiers that would allow for an identification of a specific data subject was removed for the entirety of documents assessed in accordance with the exception mentioned above.

Disclaimer

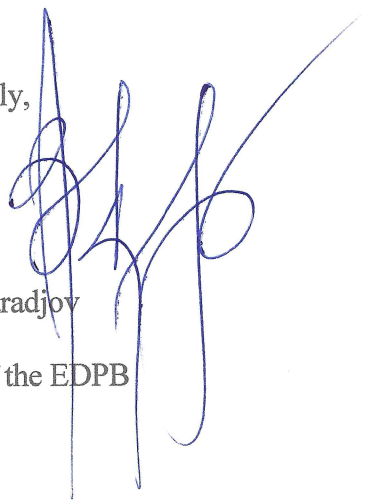
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Means of redress

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



Ventsislav Karadjov

Vice-Chair of the EDPB