

To: Johnny Ryan - ask+request-12715-5100255e@asktheeu.org

Brussels, 26 April 2023

Subject: Your application for access to documents – Ref No 2023-09

Dear Mr. Ryan,

We refer to your e-mail dated 7 March 2023 in which you made a request for access to documents.

You have requested access to the names of the data controllers in each of the 46 "amicable resolution" final decisions registered as final decisions by the Irish Data Protection Commission in the EDPB Final One Stop Shop Decisions Register for the year 2022. You have also requested any document that explains why the information was redacted in cases where the DPC concluded a case by amicable resolution. You noted that all other final decisions registered by the Irish DPC were not concluded by way of amicable resolution. In those cases, the name of the data controller was not redacted.

On 7 March 2023, we have explained to you the reasoning for redacting the information from the final decisions before publishing them on the EDPB website. When the EDPB members decided to publish a register on Article 60 decisions, they agreed that it should include the maximum information possible taking into consideration the national limitations, i.e., the final decisions adopted and the summaries, in principle not anonymised (names of the controllers and processors), except if necessary in accordance with the national law. We have indicated that the Article 60 register itself is not based on a legal obligation and the EDPB provides it voluntarily on the basis of the general task to inform the public. While doing this, we need to make sure that no confidential information is disclosed and follow the instructions provided by national supervisory authorities (national SAs) in that regard. Furthermore, in the case of Ireland it means that decisions from the Irish supervisory authority (Irish SA) do not include data of physical and legal persons, as explained on the EDPB website. As a result, we have asked you to confirm that, in light of these explanations, you would still like to maintain your request for access to documents and thus limit the scope of your request to the final decisions.

You have replied on 7 March 2023 that you would like to maintain your access to documents request and to limit your request to the final decisions, provided that the controllers are no longer redacted.

On 13 March 2023, we informed you that, since we cannot predict the outcome of our assessment before we start it, we will also include the relevant Internal Market Information System (IMI) reports and the emails sent by the EDPB Secretariat to the Irish SA in the scope of your request. On the same day, we registered your access to documents request under reference number 2023-09.

Secretariat of the European Data Protection Board

rue Wiertz, 60
1047 Brussels

In accordance with Article 7(3) of Regulation (EC) No 1049/2001 and considering the fact that your application covers a large amount of documents provided by a third party that had to be consulted in accordance with Article 4(4) and 4(5) of Regulation (EC) No 1049/2001, a 15-working day extension of the initial deadline was sent to you on 3 April 2023. The final deadline to reply to your request is therefore 26 April 2023.

Assessment

We have identified 95 documents falling within the scope of your access to documents 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 documents requested under the provisions of the Regulation 1049/2001 regarding public access to documents, alongside the scope of your request, we have come to the conclusion that disclosure of the documents cannot be granted due to the application of the following exception to the right of access laid down in Article 4 of the Regulation 1049/2001:

1.1. Article 4(2), 1st indent (“commercial interests of a legal person”). The documents to which you requested access contain commercial information (names of controllers), the disclosure of which could result in undermining the protection of the commercial interests of the companies mentioned in these documents.

The exception laid down in Article 4(2) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the information. We have not been able to identify such an interest. However, we would like to provide you with additional explanations on the full non-disclosure of the requested documents.

The EDPB Secretariat acts in line with the instructions provided by each SA when handling their decisions and preparing them for publication. Each decision is published only after validation of the need for redaction by the SA that issued the decision.

In the scope of this access to documents request, we have consulted the Irish SA in accordance with Article 4(4) of Regulation 1049/2001, to have their views on the potential disclosure of the names of the controllers in the documents in scope of this request. The Irish SA has informed us that the names of the controllers have been redacted by the Irish SA as a precaution to avoid that commercially sensitive information be disclosed. The Irish SA has suggested that in order to determine whether disclosure of the names would entail disclosing commercially sensitive information, the EDPB should engage with the individual controllers. Given that these decisions originate from the Irish SA, the EDPB is not competent to assess the possible legal risk of disclosure of the names of controllers that would be based on Irish law, we cannot grant

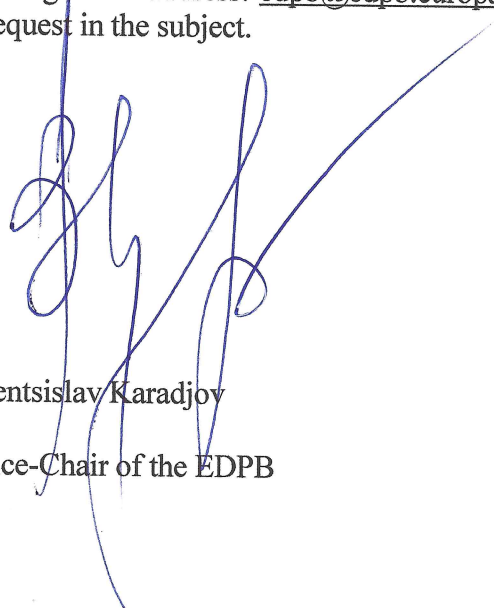
you access to the requested documents on the basis of the aforementioned Article 4(2), 1st indent of the Regulation 1049/2001.

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