



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

Directorate E – Aviation
E.2 – Aviation Agreements

Brussels
MOVE.DDG2.E.2/EZ

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Subject: Your application for access to documents (EASE/Case 2022/5553)

Dear Mr TINCHURIN,

We refer to your request for access to European Commission documents registered on 29 September 2022 under the above-mentioned reference number.

You request access to “Any information or documents concerning the request from German Federal Ministry for Digital and Transport to “untighten” the restrictive regulations introduced in the Council Regulation (EU) 833/2014 in a way, that holders of a non-commercial license (PPL, LAPL, SPL, BPL) and national licenses (recreational) could be excluded from the mentioned regulations. I refer to the E-Mail correspondence with the subject “Sanctions against Russia, non-commercial pilot licenses” (initiated by the German Federal Ministry for Digital and Transport with the E-Mail message sent to the address MOVE-AVIATION-SANCTIONS (AT) ec (DOT) europa (DOT) eu, follow-up sent on August 18, 2022 10:35 AM). My request is including (but not limited to) all internal and external correspondence (including E-Mails) related to the processing of the aforementioned issue, the minutes of the meetings where this topic was brought up, and any communication with other authorities of the EU or EU Member States on this matter”

We consider your application as referring only to documents relating to the request from the German authorities, but not to the request itself, which we assume is already in your possession.

We have identified the following document as falling within the scope of your application:

Email from DG MOVE with the subject matter “*In reply to: Sanctions against Russia, non-commercial pilot licenses - Ares(2022)7050266*”, registered as Ares(2022)7050266, and sent to the German authorities on 12 October 2022.

With regard to the document listed above, a complete disclosure of the identified document is prevented by the exception concerning the protection of privacy and the integrity of the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001¹, because it contains personal data – namely, the name and contact details of the addressee.

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 European Union 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/EC² (hereinafter ‘Regulation (EU) 2018/1725’, or ‘Data Protection Regulation’).

In particular, Article 3(1) of Regulation (EU) 2018/1725 provides that personal data “*means any information relating to an identified or identifiable natural person [...]*”. The Court of Justice has specified that any information, which by reason of its content, purpose or effect, is linked to a particular person is to be considered as personal data³.

In its judgment in Case C-28/08 P (Bavarian Lager)⁴, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁵.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if ‘[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

² 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 (OJ L 205 of 21.11.2018, p. 39).

³ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, Peter Nowak v Data Protection Commissioner, ECLI:EU:C:2017:994, paragraphs 33-35.

⁴ Judgment of 29 June 2010 in Case C-28/08 P, Commission v Bavarian Lager, ECLI:EU:C:2010:378, paragraph 63.

⁵ Whereas this judgment specifically related to 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, the principles set out therein are also applicable under the new data protection regime established by Regulation (EU) 2018/1725.

the data subject's legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests'.

Only if these conditions are fulfilled and the processing constitutes lawful handling, in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of the Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for a lawful processing of personal data only if the first condition is fulfilled, namely if the recipient has established that it is necessary to have the data transmitted to you for a specific purpose in the public interest. It is only in that case the European Commission has to examine whether there is a reason to assume that the legitimate interests of the data subject might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your request, you did not express interest to have access to some of these personal data and did not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subject's legitimate interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in these documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data contained in the requested document, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individual concerned would not be prejudiced by disclosure of the personal data concerned.

In case you would disagree with this position, you are entitled, in accordance with Article 7(2) of Regulation (EC) No 1049/2001, to submit a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed to the Secretariat-General of the Commission within 15 working days upon receipt of this letter. You can submit it in one of the following ways:

by asking for a review via your portal⁶ account (available only for initial requests submitted via the portal account);

⁶ <https://www.ec.europa.eu/transparency/documents-request>

by mail:

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7/076
B-1049 Bruxelles;

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Carlos BERMEJO ACOSTA
Head of Unit

Enclosure: 1 document