



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

The Acting Director-General

Brussels
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Subject: Your application for access to documents – EASE 2023/1402

Dear Ms Ewbank,

We refer to your request for access to European Commission documents registered on 2 March 2023 under the above-mentioned reference number.

You request access to the following documents:

“All documentation, including, but not limited to, attendance lists, agendas, background papers, minutes/notes and email correspondence about or summarising the following meetings between Director-General Henrik Hololei and industry:

- 1. Boeing International Corporation and DG Henrik Hololei on 07/02/2023 on Sustainable Aviation*
- 2. Air Transport Action Group and DG Henrik Hololei on 07/02/2023 on Sustainable Aviation*
- 3. European Regions Airline Association and DG Henrik Hololei on 23/01/2023 on Priorities for regional airlines (including Fit for 55 measures, EU taxonomy, passenger rights and the single european sky)”.*

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

Concerning the meeting between Boeing International Corporation and Director-General Henrik Hololei on 07/02/2023 on Sustainable Aviation:

- Email exchange between a representative of Boeing and the office of Henrik Hololei, Director General of DG MOVE, concerning the invitation to Boeing

New Year's reception, dated between 4 and 23 January 2023 (hereafter "document 1")

- Email exchange between a representative of Boeing and the office of Henrik Hololei, Director General of DG MOVE, concerning the Boeing New Year's reception event details, dated between 4 and 17 January 2023 (hereafter "document 2")
- Email exchange between a representative of Boeing and the office of Henrik Hololei, Director General of DG MOVE, concerning the invitation to Boeing's dinner, dated between 4 and 23 January 2023 (hereafter "document 3")
- Memory jogger prepared for the dinner between Boeing representatives and the Director-General of DG MOVE, to be held on 7 February 2023 (hereafter "document 4").
- Speech of Henrik Hololei, Director-General of DG MOVE, given at the Boeing New Year's reception on 7 February 2023 (hereafter "document 5").

Concerning the meeting between Air Transport Action Group (ATAG) and Director-General Henrik Hololei on 07/02/2023 on Sustainable Aviation

- Briefing prepared for the meeting between ATAG representatives and Henrik Hololei, Director-General of DG MOVE, to be held on 7 February 2023 (hereafter "document 6").
- Report of the meeting between representatives of ATAG and the Director General of DG MOVE, held on 7 February 2023 (hereafter "document 7").

Concerning the meeting between the European Regions Airline Association (ERA) and Director-General Henrik Hololei on 23/01/2023 on Priorities for regional airlines

- Briefing prepared for the dinner between ERA representatives and Henrik Hololei, Director-General of DG MOVE, to be held on 23 January 2023 (hereafter "document 8").
- Email exchange between a representative of ERA and the office of Henrik Hololei, Director General of DG MOVE, concerning the invitation for dinner, dated between 29 November 2022 and 9 January 2023 (hereafter "document 9")

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾ (hereinafter 'Regulation (EC) No 1049/2001'), we have come to the conclusion that the documents may be partially disclosed. Some parts of the documents have been redacted, as their full disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

First, with regard to document 6, a complete disclosure of this document is prevented by the exception to the right of access laid down in Article 4(1)(a), third indent of Regulation (EC) No 1049/2001.

⁽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, 31.05.2001, p. 43.

Article 4(1)(a), third indent of Regulation (EC) 1049/2001 establishes that “1. *The institutions shall refuse access to a document where disclosure would undermine the protection of: (a) the public interest as regards: (...) — international relations (...);*”

Some redacted parts of this document have been identified as containing sensitive information shared by a third country at the Committee on Aviation Environmental Protection Steering Group meeting 2022 (CAEP SG 2022) which, if disclosed, could seriously undermine the protection of the public interest as regards international relations. Indeed, given the fact that the disclosure of the document takes place *erga omnes*, the release of certain parts of this document to the public could be detrimental to the international relations between the European Union and certain third countries. There is a clear and foreseeable risk that the disclosure of such information, given its sensitivity, could bring harmful consequences to the climate of mutual trust between the authorities of these States and the European Union.

Therefore, the exception laid down in Article 4(1)(a), third indent of Regulation (EC) No 1049/2001 applies to some redacted parts of this document.

Moreover, some parts of documents 4, 6 and 8 have also been redacted because their disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of this Regulation.

Article 4(2), first indent of this Regulation sets out that “*The institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property (...), unless there is an overriding public interest in disclosure*”.

Some redacted parts of documents 4, 6 and 8 have been identified as containing commercially sensitive information of the companies concerned. Disclosure of these parts of the documents would undermine the protection of the commercial interests of those companies, as putting this information in the public domain would affect their competitive position on the market and, as regards document 6, their intellectual property rights.

Therefore, the exception laid down in Article 4(2) first indent of Regulation (EC) No 1049/2001 applies to some redacted parts of these documents.

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. I have examined whether there could be an overriding public interest in disclosure of the redacted parts of documents 4, 6 and 8. However, I have not been able to identify in this case any other public interest capable of overriding the public interests protected by Article 4(2) of Regulation (EC) No 1049/2001.

Finally, a complete disclosure of all documents but document 5 is also prevented by the exception concerning the protection of privacy and the integrity of individuals outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001, because they contain the following personal data:

- the names/initials and contact information of Commission staff members not pertaining to the senior management;
- the names/initials and contact details of other natural persons;

- other information relating to identified or identifiable natural persons, in particular references to functions of natural persons, to the extent that these would enable their identification.

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/EC ⁽²⁾ ('Regulation 2018/1725').

In particular, Article 3(1) of Regulation 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 data ⁽³⁾.

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 applicable ⁽⁵⁾.

In your application, you indicate that your address is in the United Kingdom. Transfers of personal data from the Commission to countries that are not members of the European Economic Area (EEA) or to international organisations are regulated under Chapter V of the Data Protection Regulation.

According to Article 47(1) of this Regulation, a transfer of personal data to a third country or an international organisation may take place where the Commission has decided that the third country, a territory or one or more specified sectors within that country, or the international organisation in question ensures an adequate level of protection and where the personal data are transferred solely to allow tasks within the competence of the controller to be carried out.

Based on the information available, the country of your residence is recognised by the Commission as ensuring an adequate level of protection. However, we would further like to inform you that according to Article 9(1)(b) of Regulation (EU) 2018/1725, 'personal

⁽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 2018/1725.

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 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 do not express any particular interest to have access to these personal data, nor do you 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 subjects' 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 documents, 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 individuals concerned would not be prejudiced by the disclosure of their personal data.

Please note that the documents originating from third parties are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

Please also note that the disclosed memory joggers, briefings and meeting reports were drawn up for internal use under the responsibility of the relevant services of the Directorate-General for Mobility and Transport. They solely reflect the authors' interpretation of the interventions made, and do not set out any official position of the third parties to which the documents refer, which were not consulted on their content. They also do not reflect the position of the Commission, and cannot be quoted as such.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make 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),

or 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,

Maja BAKRAN
Acting Director-General

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