



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

The Director-General

Brussels,
MOVE

By e-mail:
ask+request-7810-c387bb77@asktheeu.org

Subject: Your application for access to documents – Ref GestDem No 2020/1688

Dear M. Magill,

We refer to your request dated 24/03/2020 in which you make a request for access to documents, registered on 24/03/2020 under the above-mentioned reference number.

In particular, you request access to: *“All documentation, including but not limited to attendance lists, agendas, background papers, minutes/notes and email correspondence about or summarising, the following meeting:*

- 1. Between the International Air Transport Association (IATA) and member of Commissioner Vălean's cabinet Gaëlle Michelier on 18/02/2020*
- 2. Between Anheuser-Busch InBev nv/sa(ABI) and members of Commissioner Vălean's cabinet Filip Alexandru and Negreanu Arboreanuon 4/3/2020”.*

In our holding reply, dated 16/04/2020, we asked an extension of time to reply to your request since defined documents are held by different Commission services, who must have been consulted. Also in our letter, dated 08/05/2020, we explained that under these extraordinary circumstances related to COVID'19 crisis management in the Commission services, the handling of your request will be delayed.

Having examined your application, please find enclosed the document corresponding to your request.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ (hereinafter ‘Regulation (EC) No 1049/2001’), I have come to the conclusion that they may be partially disclosed. Some parts of the documents have been blanked out as their disclosure is prevented by exception to the right of access laid down in Article 4 of this Regulation.

First, 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

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.

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 ('Regulation 2018/1725').

Some of the documents to which you request access contain personal data, in particular the names, signatures, functions, telephone numbers and/or initials pertaining to staff members of an institution are to be considered personal data³.

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 data⁴.

In its judgment in Case C-28/08 P (Bavarian Lager)⁵, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁶.

Pursuant to Article 9(1)(b) of Regulation 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 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 processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1)(b) of Regulation 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 for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject's legitimate interests 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 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 the 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, as the need to obtain access thereto for a purpose in the public

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, OC L 205 of 21.11.2018, p. 39.

³ Judgment of the General Court of 19 September 2018 in case T-39/17, Port de Brest v Commission, paragraphs 43-44, ECLI:EU:T:2018:560.

⁴ 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.

⁵ Judgment of 29 June 2010 in Case C-28/08 P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 59

⁶ 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.

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 disclosure of the personal data concerned.

Second, some parts of the document are blanked out since those parts are covered by the exception provided for in Article 4 (3) first paragraph of Regulation (EC) No 1049/2001 under which "*Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure.*"

Regarding the European Commission's implementation of the obligation set out in Article 28(b) of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a system for greenhouse gas emission allowance trading within the Union and amending Council Directive 96/61/EC, an impact assessment of a broad range of options will be carried out in 2020 and nothing is decided until that impact assessment delivers.

This part of the document, relates to preliminary ideas of the Commission services that could or could not be further developed in the above mentioned impact assessment. In order to ensure the future analysis is carried out in an objective manner, it is essential that the circumstances under which relevant data and information is exchanged guarantee the necessary level of impartiality, independence, and protection, without which the proper conduct of the assessment and subsequent deliberations would be jeopardized.

These deliberations form an integral part of the European Commission's decision-making process, which has not been finalised at the time of this decision. The assessment and subsequent deliberations must be pursued without any outside influence or pressure. Disclosure of this part of the document would undermine the protection of the decision-making process of the Commission, as it would indicate preliminary views and policy options. The Commission's services must be able to explore all possible options in preparation of a decision free from external pressure.

We have examined whether there is an overriding public interest in the disclosure of this document, but we have identified none.

With regard to your requested documents in point 2, please note that the meeting initially scheduled for 04/02/2020 did not take place. In that regard, there are no documents corresponding to the point 2 in your application.

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 within 15 working days upon receipt of this letter to the Secretariat-General of the Commission at the following address:

European Commission, Secretariat-General
Unit C.1. '*Transparency, Document Management and Access to Documents*'
BERL 7/076
B-1049 Bruxelles
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

Henrik HOLOLEI
e-signed

Enclosed:

1. The briefing concerning the meeting between the International Air Transport Association (IATA) and member of Commissioner Vălean's cabinet on 18/02/2020

