



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

Directorate B - Investment, Innovative & Sustainable Transport
B.4 - Sustainable & Intelligent Transport

Brussels, 07/06/2022
[move.ddg1.b.4\(2022\)4570800](mailto:move.ddg1.b.4(2022)4570800)

Mr Peter Teffer
Follow the Money
Overtoom 197
1054 HT Amsterdam
The Netherlands

*Sent by e-mail with request for
acknowledgement of receipt:*
ask+request-11334-18632e2b@asktheeu.org

Subject: Your application for access to documents – GESTDEM 2022/3099

Dear Mr Teffer,

We refer to your e-mail dated 25 May 2022 in which you make a request for access to documents, registered on 30 May 2022 under the abovementioned reference number.

You request access to “*All documents related to the infringement case INFR(2021)0477 (Lack of transposition by the Netherlands of Directive (EU) 2019/1161 amending Dir. 2009/33/EC - Promotion of clean and energy-efficient road transport vehicles)*”.

Having examined your request, we have identified the following documents, all of them related to the infringement procedure with the reference number INFR(2021)0477, as falling within the scope of your application:

- **Annex 1:** Letter of Formal Notice sent on 29 September 2021;
- **Annex 2:** E-mail exchange between the Permanent Representation of the Kingdom of the Netherlands to the European Union and the European Commission, dated 30 September 2021.
- **Annex 3:** Letter from the Minister of Foreign Affairs of the Kingdom of the Netherlands, informing on the transposition of the Directive, dated 17 November 2021, with the following attachments:
 - **Annex 3.1:** Official publication by the Kingdom of the Netherlands of the Regulation of the State Secretary for Infrastructure and Water Management of 8 October 2021, no. IENW/BSK-2021/265234, containing rules for the promotion of clean road vehicles in support of low-emission mobility (Regulation for the promotion of clean road vehicles);
 - **Annex 3.2:** Official Gazette of the Kingdom of the Netherlands with the Act of 11 October 2021 amending the Environmental Management Act with regard to the implementation of Directive (EU) 2019/1161 of the European Parliament and of the

Council of 20 June 2019 amending Directive 2009/33/EC on the promotion of clean and energy-efficient road transport vehicles.

- **Annex 4:** Note for the proposal to close the infringement case.
- **Annex 5:** Infringement fiche stating the reasons for the closure of the case.

Having analysed the documents listed above, we have come to the conclusion that Annexes 1, 3.1 and 3.2 may be disclosed. Please find enclosed copies of these documents.

As regards Annexes 2, 3, 4 and 5, a complete disclosure of the identified documents 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 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ (hereinafter ‘Regulation (EC) No 1049/2001’), because they contain the following personal data:

- The names and signatures of Commission staff members not pertaining to the senior management;
- The names and signatures 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/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.

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).

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 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.

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 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 subject’s legitimate interests might be prejudiced.

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

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.

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.

Finally, we kindly ask you to confirm receipt of this reply.

Yours sincerely,

(e-signed)
Kristian HEDBERG

Annexes: 7

