



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

The Director-General

Brussels
MOVE/HH

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*sent by e-mail with request for
acknowledgement of receipt:*
[ask+request-11677-
50e29a8a@asktheeu.org](mailto:ask+request-11677-50e29a8a@asktheeu.org)

Subject: Your application for access to documents – GESTDEM 2022/4462

Dear Sir,

We refer to your e-mail of 5 August 2022 in which you make a request for access to documents, registered on the same day under the above mentioned reference number, and to our further correspondence dated 16 and 17 August 2022.

According to your initial request, and to the clarifications that you kindly provided on 17 August 2022, you request access to the following documents:

“all reports (and other notes) from meetings between the Commission and representatives of UAF and/or ACI EUROPE since July 1st 2021 in relation to the mentioned complaint, as well as all correspondence (including emails and WhatsApp messages) between the Commission and representatives of UAF and/or ACI Europe since July 1st 2021 in relation to this complaint (complaint to the European Commission against the French government's intended ban on domestic flights for which there's an alternative by train).”

The following documents have been identified as corresponding to your request:

- **Document 1:** Email from Airports Council International (ACI) EUROPE of 17 September 2021 to Mr. Henrik Hololei, Director-General of DG MOVE, and to the Secretariat-General;
- **Document 1.1:** Joint letter from ACI EUROPE and the Union des Aéroports Français & Francophones Associés (UAF&FA) of

17 September 2021 to Mr. Henrik Hololei, with a copy to the Secretariat-General, with the reference ARES(2021)5728587, sent as an attachment to Document 1;

- **Document 2:** Reply from DG MOVE of 4 October 2021 to ACI EUROPE & UAF&FA, with the reference ARES(2021)6024725, asking to lodge a complaint using the correct standard form.
- **Document 3:** Complaint form from ACI EUROPE and UAF&FA dated 5 October 2021, registered as a complaint under the reference CHAP(2021)03705;
 - **Document 3.1:** Joint letter from ACI EUROPE and the Union des Aéroports Français & Francophones Associés (UAF&FA) referred above as Document 1.1, sent as an attachment to the complaint form;
- **Document 4:** Letter from DG MOVE dated 14 October 2021, acknowledging receipt of the complaint registered under number CHAP(2021)03705;
- **Document 5:** Letter of DG MOVE to ACI EUROPE dated 22 December 2021, with the reference ARES(2021)7947912;
- **Document 6:** Request for access to documents presented by ACI EUROPE dated 17 December 2021, registered under GESTDEM 2021/8193, with the reference ARES(2021)7832977;
- **Document 7:** Acknowledgment of receipt from DG MOVE to the access to documents request GESTDEM 2021/8193, dated 17 December 2021, with the reference ARES(2021)7832982;
- **Document 8:** E-mail from DG MOVE concerning the correct reference of a document requested under GESTDEM 2021/8193, dated 20 December 2021, with the reference ARES(2021)7865945;
- **Document 9:** Negative reply from DG MOVE to the access to documents request dated 14 January 2022, with the reference ARES(2022)277484.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents¹ (hereinafter ‘Regulation (EC) No 1049/2001’), we regret to inform you that your application cannot be granted, as disclosure is prevented by an exception to the right of access laid down in Article 4(2) of this Regulation.

In particular, Article 4(2), third indent of Regulation (EC) 1049/2001 establishes that *"The institutions shall refuse access to a document where disclosure would undermine*

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).

the protection of (...) the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure."

The exception foreseen in Article 4(2), third indent, of the above mentioned Regulation applies in particular to investigations engaged by the Commission services under Article 20(2) of Regulation (EC) No 1008/2008 of the European Parliament and of the Council of 24 September 2008 on common rules for the operation of air services in the Community². The documents requested are covered by the referred exception, as they relate to this ongoing examination.

Article 20(2) of this Regulation sets out the following: *"When a Member State considers that action under paragraph 1 is necessary it shall, at least three months before the entry into force of the action, inform the other Member States and the Commission, providing adequate justification for the action. The action may be implemented unless within one month of receipt of the information a Member State concerned contests the action or the Commission, in accordance with paragraph 3, takes it up for further examination."*

According to the provision of Article 20(3) of this Regulation, *"At the request of another Member State or on its own initiative, the Commission may, in accordance with the procedure referred to in Article 25(2), suspend the measures if they do not meet the requirements of paragraph 1 or are otherwise contrary to Community law."*

Under the procedure of Article 20(2) of Regulation (EC) No 1008/2008, the Commission decides, after consulting the Advisory Committee, whether or not to take up the measures referred to in paragraph 1 and envisaged by the Member State concerned for further examination.

Such further examination by the Commission is currently ongoing in order to ensure that the measures envisaged by the Member State concerned are compatible with Article 20(1) of the Regulation. This examination has not yet been completed and a decision on the substance has not yet been taken by the Commission.

Disclosure of the documents requested at this stage of the procedure would affect the purposes of the examination, as well as the climate of mutual trust between the authorities of the Member State concerned and the Commission. It has to be noted that access granted in response to an application is to be considered as disclosure to the public at large (*erga omnes*)³. Therefore, the disclosure of the requested documents at this stage of the procedure would undermine the protection of the objectives of the inspection and investigation activities carried out in the framework of Article 20(2) of Regulation (EC) No 1008/2008, which thus justifies the application of the exception laid down in Article 4(2), third indent of Regulation (EC) No 1049/2001 to these documents.

Pursuant to Art 4(6) of Regulation (EC) 1049/2001 we have considered whether partial access could be granted to the documents requested. However, given the nature and structure of the documents, partial access would have similar effects as the complete access to the documents. It follows from the assessment made above that the requested documents are entirely covered by the aforementioned exception.

² OJ L 293 of 31.10.2008, p. 3.

³ Judgment of the General Court of 21 October 2010 in case T-439/08, ECLI:EU:T:2010:442, *Agapiou Joséphidès v Commission and EACEA*, para 116.

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. We have considered whether an overriding public interest exists and were not able to identify such an interest.

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 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.

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

Yours faithfully,

(e-signed)

Henrik HOLOLEI