



EUROPEAN COMMISSION

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**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001¹**

**Subject: Your confirmatory application for access to documents under
Regulation (EC) No 1049/2001 - 2022/4462**

Dear Mr Hoedeman,

I refer to your letter of 19 September 2022, registered on the same day, in which you submitted a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereafter 'Regulation (EC) No 1049/2001').

1. SCOPE OF YOUR REQUEST

In your initial application of 5 August 2022, you requested access to the following documents, I quote:

- 'all reports (and other notes) from meetings between the European Commission and representatives of the Union des Aéroports Français (UAF) and/or the Airports Council International Europe (ACI Europe) since July 1st 2021.
- all correspondence (including emails and WhatsApp messages) between the European Commission and representatives of the Union des Aéroports Français (UAF) and/or the Airports Council International Europe (ACI Europe) since July 1st 2021.

¹ OJ L 345, 29.12.2001, p. 94.

² OJ L 145, 31.5.2001, p. 43.

- a list of all the above-mentioned documents (including dates, names of participants/senders/recipients and their affiliation, subject of meeting/correspondence).'

Your request was attributed to the Directorate-General for Mobility and Transport ('DG MOVE' hereafter).

Following DG MOVE's clarification request of 16 August, you clarified on 17 August that your request concerns 'specifically 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)'.

In its initial reply of 7 September 2022, DG MOVE identified the following documents:

- 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.

DG MOVE refused access to these documents based on the exception of the third indent of Article 4(2) (protection of the purpose of inspections, investigations and audits) of Regulation (EC) No 1049/2001.

In your confirmatory application, you request a review of this position with regard to documents 1, 1.1, 3 and 3.1. I would like to clarify that, as described above, documents 3.1 and 1.1 are identical and therefore the present decision concerns only three documents, namely 1, 1.1 and 3.

2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a review of the reply given by the Directorate-General concerned at the initial stage.

The documents identified originate from Airports Council International Europe and Union des aéroports français de Francophones Associés. Therefore, in accordance with Article 4(4) of Regulation (EC) No 1049/2001, the Secretariat-General consulted the third parties with a view to assessing whether an exception in paragraph 1 or 2 of Article 4 of Regulation (EC) No 1049/2001 is applicable. In the absence of any reply from the third parties to the consultation, the Secretariat-General has to decide in accordance with the rules on exceptions in Article 4 of Regulation (EC) No 1049/2001, taking into account the legitimate interests of the third parties on the basis of the information at its disposal.

Following this review and in view of the important change in the factual circumstances involving the adoption by the Commission of an implementing decision 2022/2358 of 1 December 2022³, I am pleased to inform you that wide partial access is granted to documents 1, 1.1. and 3 with the exception of limited parts that are redacted based on the exception laid down in Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

The detailed reasons underpinning the assessment are set out below.

2.1. Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data'.

³ OJ L 311/168, 2.12.2022.

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, 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 data⁵ (hereafter ‘Regulation (EC) No 45/2001’) becomes fully applicable.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 ‘requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with [...] [the Data Protection] Regulation’⁶. Likewise, in the *Psara* judgment, the General Court added that Article 4(1)(b) ‘establishes a specific and reinforced system of protection of a person whose personal data could, in certain cases, be communicated to the public [...]’⁷.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by 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/EC⁸ (hereafter ‘Regulation (EU) 2018/1725’).

However, the case-law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’.

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life’⁹.

Documents to which you requested access contain personal data such as the names, surnames, and contact details (postal address, e-mail address, and phone number) of persons who are not public figures acting in their public capacity and of Commission staff members not forming part of the senior management of the institution. Moreover, they include handwritten signatures.

⁴ Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd* (hereafter referred to as ‘*European Commission v The Bavarian Lager* judgment’) C-28/08 P, EU:C:2010:378, paragraph 59.

⁵ Official Journal L 8, 12.1.2001, p. 1.

⁶ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

⁷ Judgment of 25 September 2018, *Maria Psara and Others v European Parliament*, T-639/15 to T-666/15 and T-94/16, EU:T:2018:602, paragraph 65.

⁸ Official Journal L 295, 21.11.2018, p. 39.

⁹ Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

The names of the persons concerned as well as other data from which their identity can be deduced undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725¹⁰.

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 processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data¹¹. This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes 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 confirmatory application, 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 subjects’ legitimate interests might be prejudiced.

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

¹⁰ *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

¹¹ Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Authority*, C-615/13 P, EU:C:2015:489, paragraph 47.

Consequently, the Secretariat-General concludes that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the withheld personal data, 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 the personal data concerned.

3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Please note that Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

4. PARTIAL ACCESS

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, partial access has been granted to the documents requested. No further partial access can be granted without undermining the interest protected by Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

5. MEANS OF REDRESS

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,

For the Commission
Ilze JUHANSONE
Secretary-General

Enclosures: (3)

