Subject: Your application for access to documents - EASE 2023/6978

Dear Mr Hoedeman,

I refer to your request for a European Commission document registered on 23 November 2023 under the above-mentioned reference number.

Your request concerns a letter sent by Commissioner Adina Vălean to the Dutch Minister Mark Harbers on 13 November 2023 about a cap on the maximum number of movements at Schiphol airport.

Having examined the document requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents (¹), I regret to inform you that your application cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

Article 4(2), third indent of Regulation (EC) 1049/2001 establishes that “the institutions shall refuse access to a document where disclosure would undermine 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 abovementioned Regulation applies in particular to investigations carried out by the services of the Commission to review a process for the introduction of operating restrictions, under Article 8(3) of Regulation (EC) No 598/2014 of the European Parliament and of the Council of 16 April 2014 on the establishment

of rules and procedures with regard to the introduction of noise-related operating restrictions at Union airports within a Balanced Approach (\(^2\)).

The document which you seek to obtain are covered by this exception, as they form part of the administrative file of an ongoing review, engaged by the Commission services under Article 8(3) of Regulation (EU) No 598/2014, following a formal notification submitted by the Dutch authorities, under Article 8(1) of Regulation (EU) No 598/2014, of their intention to introduce noise-related operating restrictions at Schiphol airport.

Indeed, Article 8(1) of Regulation (EU) No 598/2014 sets out the following: “Before introducing an operating restriction, the competent authorities shall give to the Member States, the Commission and the relevant interested parties six months’ notice, ending at least two months prior to the determination of the slot coordination parameters as defined in point (m) of Article 2 of Council Regulation (EEC) No 95/93 (…) for the airport concerned for the relevant scheduling period.”

Under the procedure of Article 8(3) of Regulation (EU) No 598/2014 the Commission may “At the request of a Member State or on its own initiative” and “within a period of three months after the day on which it receives notice under paragraph 1, review the process for the introduction of an operating restriction. Where the Commission finds that the introduction of a noise-related operating restriction does not follow the process set out in this Regulation, it may notify the relevant competent authority accordingly. The relevant competent authority shall examine the Commission notification and inform the Commission of its intentions before introducing the operating restriction”.

Such review by the Commission is currently on-going, in order to ensure that the process for the introduction of operating restrictions and the measures envisaged by the Member State concerned are compatible with the requirements laid down in Regulation (EU) No 598/2014. This review has not yet been completed, and a decision on the abovementioned process and on the compatibility of the planned operating restrictions at Schiphol airport with Regulation (EU) No 598/2014 has not yet been taken by the Commission. At this stage of the procedure, disclosure of the document requested would affect the purpose of the review, as well as the climate of mutual trust between the authorities of the Member State in question and the Commission, also in relation to the purposes of that specific procedure.

Therefore, the disclosure of the requested document 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 8(3) of Regulation (EU) No 598/2014, which in turn also justifies the application of the exception laid down in Article 4(2), third indent of Regulation (EC) No 1049/2001 to the document.

Therefore, for all of the reasons mentioned above, the exception laid down in Article 4(2), third indent of Regulation (EC) No 1049/2001 applies to this document.

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 examined whether there could be an overriding public interest in disclosure but have not been able to identify any such interest.

We have considered whether partial access could be granted to the document requested, pursuant to Article 4(6) of Regulation (EC) 1049/2001. However, given the nature and structure of the document, no meaningful partial access would be possible without undermining the protection of the public interests described above. We have therefore concluded that it is not possible to grant partial access to the requested document.

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 by mail: 

European Commission
Secretariat-General
Transparency, Document Management & Access to Documents (SG.C.1)
BERL 7076
B - 1049 Bruxelles

or by email to:

sg-acc-doc@ec.europa.eu

Yours sincerely,

Magda KOPCZYŃSKA

Electronically signed on 07/12/2023 14:45 (UTC+01) in accordance with Article 11 of Commission Decision (EU) 2021/2121