Subject: Your application for access to documents EASE 2024/1226

Dear Mr Hoedeman,

We refer to your request for a European Commission document, registered on 4 March 2024 under the above-mentioned reference number, and to your e-mail sent on 29 February 2024 registered with the reference Ares(2024)1752007.

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.

In your request and in your e-mail, you state that the Dutch government has withdrawn the measure which would have reduced annual movements at Schiphol airport to 460,000 as of March 2024, and ask what reviewing process the Commission services are still carrying out.

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

I would like to start by pointing out that the Dutch authorities suspended the measure as announced by the Minister for Water and Infrastructure announced to the House of Representatives on 14 November 2023(2). The measure is being contested in front of the Dutch Supreme Court, which is due to issue a decision in the second quarter of 2024. Depending on

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(2) Kamerbrief over stand van zaken Hoofdlijnenbesluit Schiphol | Kamerstuk | Rijksoverheid.nl
the outcome of the Supreme Court’s judgment, there is a possibility that the Dutch government could lift the suspension.

The Commission services thus do not consider the file closed and, pending the Supreme Court’s judgment, the disclosure of the letter is prevented by Article 4(2) second indent and third indent of the abovementioned Regulation.

Article 4(2), second and third indent of this Regulation establishes that “the institutions shall refuse access to a document where disclosure would undermine the protection of (...) court proceedings and legal advice,” and “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 the “balanced approach” process, 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(3).

The document which you seek to obtain is still covered by this exception, as it forms 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.

Therefore, disclosure of the requested document at this stage of the procedure would still 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.

In addition, the document object of this request is also covered by the exception laid down in Article 4(2), second indent of Regulation (EC) 1049/2001 as it relates to a matter which is still the subject of proceedings before the Dutch court. As the provision in question does not make any distinction between national judicial proceedings or proceedings of the Courts of the European Union, the need to ensure the proper conduct of the judicial proceedings and, where appropriate, prevent third parties not involved in the judicial proceedings from having any direct or indirect influence on an open procedure is also applicable in this case.

Consequently, for all of the reasons mentioned above, the exceptions laid down in Article 4(2), second and third indent of Regulation (EC) No 1049/2001 apply 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

(3) OJ L 173, 12.6.2014, p. 65
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 7/076
B - 1049 Bruxelles

or by email to:

sg-acc-doc@ec.europa.eu

Yours sincerely,

Magda KOPCZYŃSKA
Director-General