Subject: Your application for access to documents – EASE 2024/3099

Dear Mr Youriev,

We refer to your request for access to European Commission documents registered on 11 June 2024 under the above-mentioned reference number.

You request access to “all documentation, including, but not limited to, attendance lists, agendas, background papers, minutes/notes and email correspondence between Penta (formerly Hume Brophy) and DG MOVE that contains the term(s) "Airlines for America" and/or "American Airlines" and/or "United Airlines" and/or "Delta Air Lines" and/or "Southwest Airlines" and/or "JetBlue" and/or "Alaska Airlines" and/or "Wizz Air" (...) between 01/01/2023 and the date of fulfilment of this request.”

We consider your request to cover documents held up to the date of your initial application, i.e. 11 June 2024.

We have identified the following documents as falling within the scope of your application:

- **Annex 1:** Minutes of the meeting between Wizz Air and the Cabinet of the Commissioner for Transport Adina Vălean, 8 March 2023, with the reference Ares(2024)5200139;

- **Annex 2:** E-mail exchange between Pentagroup and the Cabinet of the Commissioner for Transport Adina Vălean, 9 May 2023, with the reference Ares(2023)3497929, containing the following attachment:
- **Annex 2.1**: Letter by Airlines for America, 9 May 2023, with the reference Ares(2023)3497929;

- **Annex 3**: Letter by the Cabinet of the Commissioner for Transport Adina Vălean to Airlines for America, 12 June 2023, with the reference Ares(2023)4057592;

- **Annex 4**: Minutes of the meeting held between Wizz Air and the Commission services, 5 September 2023, with the reference Ares(2023)6028262;

- **Annex 5**: E-mail exchange between Pentagroup and the Commission services, dated between 31 August 2023 and 14 September 2023, with the reference Ares(2024)3079705;

- **Annex 6**: E-mail from Pentagroup to the Cabinet of the Commissioner for Transport Adina Vălean, 12 September 2023, with the reference Ares(2024)5234059, containing the following attachment:
  - **Annex 6.1**: Letter by Airlines for America and the International Air Transport Association, 12 September 2023, with the reference Ares(2024)5234059;

- **Annex 7**: Briefing for the meeting to be held between Airlines for America and Magda Kopczynska, Director-General of DG MOVE, on 11 October 2023, with the reference Ares(2024)3431979;

- **Annex 8**: Minutes of the meeting held between Airlines for America and Magda Kopczynska, Director-General of DG MOVE, on 11 October 2023, with the reference Ares(2023)6910977;

- **Annex 9**: Minutes of the meeting held between Wizz Air and the Commission services, 16 October 2023, with the reference Ares(2023)7119425;

- **Annex 10**: E-mail from Airlines for America to Magda Kopczynska, Director-General of DG MOVE, 20 October 2023, with the reference Ares(2023)7143915, containing the following attachment:
  - **Annex 10.1**: Letter by Airlines for America, 20 October 2023, with the reference Ares(2023)7143915;

- **Annex 11**: E-mail exchange between Pentagroup and members of the Cabinet of the Commissioner for Transport Adina Vălean dated 12 January 2024, with the reference Ares(2024)3171976;

- **Annex 12**: E-mail from Pentagroup to the Commission services, 19 January 2024 2023, with the reference Ares(2024)5231371;

- **Annex 13**: Minutes of the meeting held between Airlines for America and the Cabinet of the Commissioner for Transport Adina Vălean on 30 January 2024, with the reference Ares(2024)1964109;

- **Annex 14**: Minutes of the meeting held between Airlines for America and the Commission services, 15 May 2024, with the reference Ares(2024)3502852.
Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents (1) (hereinafter ‘Regulation (EC) No 1049/2001’), we have come to the conclusion that they may be partially disclosed.

Firstly, a complete disclosure of these 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, because they contain the following personal data:

— the names/initials and contact information of Commission staff members not pertaining to the senior management;
— the names/initials and contact details of other natural persons;
— handwritten signatures/abbreviated signatures of natural persons;
— other information relating to identified or identifiable natural persons, in particular references to their functions 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/EC (2) (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 data (3).

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 applicable (5).

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(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
In your application, you indicate that your address is in the United Kingdom. Transfers of personal data from the Commission to countries that are not members of the European Economic Area (EEA), or to international organisations are regulated under Chapter V of the Data Protection Regulation.

According to Article 47(1) of this Regulation, a transfer of personal data to a third country or an international organisation may take place where the Commission has decided that the third country, a territory or one or more specified sectors within that country, or the international organisation in question ensures an adequate level of protection and where the personal data are transferred solely to allow tasks within the competence of the controller to be carried out.

Based on the information available, the country of your residence is recognised by the Commission as ensuring an adequate level of protection. However, we would further like to inform you that according to Article 9(1)(b) of the Data Protection Regulation, 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.

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

As regards Annexes 1, 4, 7, 8 and 9, some parts of these documents have also been redacted because their disclosure is prevented by the exception to the right of access laid down in Article 4(2), first indent of Regulation (EC) No 1049/2001.

Article 4(2), first indent of this Regulation sets out that “The institutions shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property (…), unless there is an overriding public interest in disclosure”.

Some redacted parts of these documents have been identified as containing commercially sensitive information of the organisations concerned. Indeed, these documents contain information on business plans, data, secrets or strategies of these organisations which, if made public, could undermine the achievement of their commercial purposes and objectives. In addition, some parts of these documents contain certain positions or views manifested by these organisations bilaterally to the Commission which were not meant to be made public, as their disclosure would be harmful for their commercial interests, business relationships and strategies. Finally, the disclosure of some other parts of these documents would also affect the competitive positions of these organisations in the market.

Therefore, the exception laid down in Article 4(2), first indent of Regulation (EC) No 1049/2001 applies to some redacted parts of these documents.

Concerning Annex 7 some parts of the document have also been redacted given the fact that their disclosure is prevented by the exception to the right of access laid down in Article 4(1)(a), third indent of Regulation (EC) No 1049/2001.

Article 4(1)(a), third indent of the Regulation establishes that “The institutions shall refuse access to a document where disclosure would undermine the protection of: (a) the public interest as regards: (…) — international relations (…)”.

Some redacted parts of these documents have been identified as containing sensitive information which, if disclosed, could seriously undermine the protection of the public interest as regards international relations. Indeed, given the fact that the disclosure of the documents takes place erga omnes, the release of certain parts of these documents to the public could be detrimental to the international relations between the European Union and certain third countries, such as the United States of America, or between the European Union and certain international organisations.

There is a potential risk that the disclosure of such information, given its sensitivity, could potentially undermine the Union positions and relations with the third countries and international organisations concerned. The disclosure of certain parts of these documents could also have negative repercussions for ongoing negotiations between the European Union and its Member States and certain third countries and international organisations, as they could limit the possibilities to come to final agreements that preserve the Union interest.
Therefore, the exception laid down in Article 4(1)(a), third indent of Regulation (EC) No 1049/2001 also applies to some redacted parts of these documents.

Concerning Annex 7, some parts of the document have also been redacted due to the fact that their disclosure is prevented by the exceptions to the right of access laid down in the second and third indents of Article 4(2) of Regulation (EC) No 1049/2001.

Article 4(2), second and third indents of Regulation (EC) No 1049/2001 establish that “The institutions shall refuse access to a document where disclosure would undermine the protection of (...) - court proceedings and legal advice, - the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure”.

The redacted parts of these documents refer to a measure which is being contested in front of Dutch Courts, which is due to issue a decision in the course of 2024. The disclosure of the relevant parts of these documents at this moment in time could undermine the integrity and purpose of the ongoing national proceedings, which must ensure an independent examination of the matter, in compliance with the principles of sound administration of justice. It is to be noted, in that regard, that the exception in question does not make any distinction between national judicial proceedings or proceedings of the Courts of the European Union, as 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 applicable in both cases.

Further, the redacted parts of these documents 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 (6), following a formal notification submitted by the Dutch authorities, under Article 8(1) of the same regulation, of their intention to introduce noise-related operating restrictions at Schiphol airport. In that regard, it is to be noted that the exception foreseen in Article 4(2) of Regulation (EC) No 1049/2001 also applies to investigations that are carried out by the services of the Commission under Article 8(3) of Regulation (EC) No 598/2014, meant 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 that regulation.

Therefore, the exceptions laid down in Article 4(2), second and third indents of Regulation (EC) No 1049/2001 also apply to the redacted parts of these documents.

Finally, concerning Annex 7, some parts of this document have also been redacted as their disclosure is prevented by the exception to the right of access laid down in the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001.

Article 4(3), first subparagraph of this Regulation sets out that “Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure”.

Part of the redacted information is linked to a possible revision of Directive 2009/12/EC on airport charges (7). A possible proposal will be determined in time and content by the next College. The decision-making process of the Commission which may lead to the adoption of a proposal for the revision of this Directive is sensitive, given that the stakeholders affected by the proposal have largely opposing interests, which need to be appropriately assessed and weighed in the course of policy-making; indeed, there is in this case a clear risk for targeted external pressure which goes beyond the expression of public interest that is to be expected for any legislative proposal (8). The Commission is continuously reflecting with stakeholders on how to improve the relevant legislative framework, but the relevant aspects of the future proposal are still under consideration. The disclosure of the information contained, at this moment in time, would therefore be liable to undermine the ongoing decision-making process. It is to be noted, in that regard, that the Union institutions must be free to explore all possible options in preparation of their decisions free from external pressure.

Finally, disclosure of certain redacted parts of this document would undermine, also in a foreseeable and non-hypothetical manner, the decision-making process of the Commission as regards international agreements which are currently under negotiation. Indeed, the disclosure of certain parts of these documents would limit the possibilities to come to final agreements that preserve the Union interest, and hence jeopardise the decision-making processes leading to such agreements.

Therefore, the exception laid down in the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 also applies to these documents.

As mentioned above, the exceptions laid down in Article 4(2) and (3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. We have also examined whether there could be an overriding public interest in disclosure of the redacted parts of these documents. However, we have not been able to identify in this case any other public interest capable of overriding the public interests protected by Article 4(2) and (3) of Regulation (EC) No 1049/2001.

Please note that documents originating from third parties are disclosed to you based on Regulation (EC) No 1049/2001. However, this disclosure is without prejudice to the rules on intellectual property, which may limit your right to reproduce or exploit the released documents without the agreement of the originator, who may hold an intellectual property right on them. The European Commission does not assume any responsibility from their reuse.

Please also note that the disclosed reports, minutes and briefings of meetings were drawn up for internal use under the responsibility of the relevant services of the Directorate-General for Mobility and Transport. They solely reflect the authors’ interpretation of the interventions made, and do not set out any official position of the third parties to which the documents refer. They also do not reflect the position of the Commission, and cannot be quoted as such. Please also note that the mere existence of briefings or similar


documents does not imply that their content was necessarily used during the (preparation of) the meeting or event for which they were drafted.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled 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 Secretariat-General of the Commission. You can submit it:

by mail, to:

European Commission
Secretariat-General
Unit C.1. ‘Transparency, Document Management and Access to Documents’
BERL 7/076
B-1049 Brussels,

or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

Electronically signed

p.p. Fotini IOANNIDOU

Magda KOPCZYŃSKA
Director-General

Enclosure: 17 Annexes