



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

The Director-General

Brussels
MOVE/HH

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Subject: Your application for access to documents – GESTDEM 2022/4336

Dear Madam,

We refer to your application dated 28 July 2022 in which you make a request for access to documents, registered on the same date under the abovementioned reference number.

You request access to the following documents:

“All documentation, including, but not limited to, attendance lists, agendas, background papers, minutes/notes and email correspondence about or summarising, the following meetings of Director-General Henrik Hololei and DG MOVE and their cabinet with multiple organisations:

(...)

2. Meeting with Airbus on 14/06/2022 about SAF.

3. Meeting with Lufthansa Group (LHG) on 25/05/2022 about Fit for 55”

Please note that due to the wide scope of your request, covering also areas falling under the responsibility of other Directorates of the Directorate-General for Mobility and Transport (DG MOVE), parts of your request have been attributed to other Directorates¹. This reply relates only to the documents concerning the meetings listed above which

¹ In particular, the request registered under the reference number GESTDEM 2022/4335, which concerns the “*Meeting with Verband der Automobilindustrie (VDA) on 15/06/2022 about the situation of automotive industry and Fit for 55*”.

relate to aviation. You either already received or will receive the replies from the other Directorates of DG MOVE in due course.

I consider your request to cover documents held up to the date of your initial application, i.e. 28 July 2022.

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

Concerning the meeting with Lufthansa Group - Brussels Airlines on 25/05/2022 on Fit for 55 and slots:

- Email exchanges between Lufthansa Group and the office of Henrik Hololei, Director-General of DG MOVE, between 5 and 13 April 2022, to organise a meeting (hereafter “document 1”);
- Flash report of the meeting between representatives of the Lufthansa Group and the Director-General of DG MOVE, dated 25 May 2022 (hereafter “document 2”); and
- Briefing prepared for the meeting between representatives of the Lufthansa Group and the Director-General of DG MOVE, to be held on 25 May 2022 (hereafter “document 3”).

Concerning the meeting with Airbus on 14/06/2022 about SAF:

- Email exchanges between Airbus and the office of Henrik Hololei, Director-General of DG MOVE, between 3 and 31 May 2022 (hereafter “document 4”);
- Memory jogger prepared for the meeting between representatives of Airbus and the Director-General of DG MOVE, to be held on 14 June 2022 (hereafter “document 5”); and
- Minutes of the meeting between representatives of Airbus and the Director-General of DG MOVE, dated 14 June 2022 (hereafter “document 6”).

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereinafter ‘Regulation (EC) No 1049/2001’), we have come to the conclusion that the documents may be partially disclosed. Some parts of the documents have been redacted, as their full disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

First, with regard to **documents 3, 5 and 6**, a complete disclosure of these documents 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 Regulation (EC) 1049/2001 establishes that “1. *The institutions shall refuse access to a document where disclosure would undermine the protection of: (a) the public interest as regards: (...) — international relations (...);*”

² 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, 31.05.2001, p. 43.

Some redacted parts of **these documents** have been identified as containing sensitive information on an Air Services Agreement between the EU and a third country, on current negotiations with third countries concerning research and innovation, and on certain aspects of the current emissions trading system, 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. There is a clear and foreseeable risk that the disclosure of such information, given its sensitivity, could bring harmful consequences to the climate of mutual trust between the authorities of these States and the European Union.

Therefore, the exception laid down in Article 4(1)(a), third indent of Regulation (EC) No 1049/2001 applies to some redacted parts of these documents.

As regards **documents 3 and 5**, 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 this Regulation.

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 Lufthansa Group and of other companies, which if put in the public domain, could affect their competitive position on the market. Indeed, these documents contain information on specific commercial strategies of the Lufthansa Group and on the business situation of other companies, which, if made public, could undermine the achievement of their commercial purposes and objectives.

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

Finally, with regard to **documents 3, 5 and 6**, a complete disclosure of these documents is also prevented by the exception laid down in Article 4(3) of Regulation (EC) No 1049/2001, because parts of them concern matters on which a decision has not been taken by the Commission, or which would seriously undermine the institution's decision-making process even after the decision has been taken.

Pursuant to Article 4(3) of Regulation (EC) No 1049/2001, “*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*”.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure”.

Indeed, the disclosure of certain parts of **documents 3 and 6** at this moment in time would seriously undermine the decision-making process of the Commission, as they would reveal preliminary views and policy options which are currently under consideration, namely concerning an ordinary legislative procedure for a proposal to amend Council Regulation (EEC) No 95/93 on airport slot allocation, and an ordinary

legislative procedure on the revision of the EU emissions' trading system. The Commission services must be free to explore all possible options in preparation of a decision free from external pressure; the disclosure of these preliminary views at this moment in time would risk seriously undermining the decision-making freedom of the Commission, as their disclosure to the public could deter staff from formulating them independently, and without being unduly influenced by the prospect of wide disclosure.

Also, the disclosure of certain parts of **document 5** at this moment in time would seriously jeopardise the decision-making process of the Commission even after the adoption of the decision, as they contain preliminary views and opinions for internal use as part of consultations within the Commission concerning a proposal for a Regulation for ensuring a level playing field for sustainable air transport; as the legislative procedure concerning this proposal is still ongoing, the Union institutions must be free to explore all possible options in preparation of their decisions free from external pressure. Also in this case, the disclosure of such opinions could deter staff from formulating them independently, and without being unduly influenced by the prospect of wide disclosure exposing the institution of which they are part. It is to be noted that the possibility of expressing views independently within the institution is necessary to encourage internal discussions with a view to improving the functioning of the Commission, as well as to contribute to the smooth running of its decision-making process³.

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

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. I have examined whether there could be an overriding public interest in disclosure. However, I have not been able to identify any other public interest capable of overriding the public interests protected by Article 4(3) of Regulation (EC) No 1049/2001.

Finally, a complete disclosure of **all documents** is also prevented by the exception concerning the protection of privacy and the integrity of individuals 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;
- other information relating to identified or identifiable natural persons, in particular references to functions of natural persons, 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

³ Judgment of the General Court of 15 September 2016, Case T-18/15 - *Philip Morris v Commission*, ECLI:EU:T:2016:487, paragraph 87.

and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC⁴ ('Regulation 2018/1725').

In particular, Article 3(1) of Regulation 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 data⁵.

In its judgment in Case C-28/08 P (Bavarian Lager)⁶, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁷.

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) 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 pursuant to Article 9(1)(b) of Regulation 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 handling in accordance with the requirements of Article 5 of Regulation 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.

⁴ 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, OJ L 205 of 21.11.2018, p. 39.

⁵ Judgment of the Court of Justice of the European Union of 20 December 2017 in Case C-434/16, Peter Nowak v Data Protection Commissioner, ECLI:EU:C:2017:994, paragraphs 33-35.

⁶ Judgment of 29 June 2010 in Case C-28/08 P, Commission v Bavarian Lager, ECLI:EU:C:2010:378, paragraph 63.

⁷ 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 of personal data by the Community institutions and bodies and on the free movement of such data, the principles set out therein are also applicable under the new data protection regime established by Regulation 2018/1725.

In your request, 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 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 disclosure of the personal data concerned.

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 briefing, memory jogger, minutes and meeting report 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.

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 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

Attachments: 6