



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 2021/2558**

Dear Sir,

We refer to your application of 14 April 2021 in which you make a request for access to documents, registered on 21 April 2021 under the abovementioned reference number, as well as to my services' holding reply of 11 May 2021.

You request access to:

*“All documentation, including but not limited to, attendance lists, agendas, background papers, minutes/notes and email correspondence about or summarising, the following meetings of the cabinet members of DG Mobility and Transport with multiple organisations.*

- 1. Meeting with Airlines4Europe on the 25/03/2021 on Conversation with A4E steering board.*
- 2. Meeting with Airlines4Europe on the 23/03/2021 on aviation recovery.*
- 3. Meeting with Delta Airlines on the 22/03/2021 on Air traffic recovery, sustainability.”*

I consider your request to cover documents held up to the date of your initial application, i.e. 14 April 2021 and which concern meetings between members of the Cabinet of Commissioner Vălean and the organisation/undertaking concerned.

Meeting between the Cabinet members of Commissioner Vălean and Airlines for Europe (A4E) on 25 March 2021:

Having examined your request, we have identified the following documents as falling within the scope of your application:

- Email exchanges between A4E and the Cabinet of Commissioner Vălean between 28 October 2020 and 18 February 2021 concerning Commissioner Vălean’s meeting with the A4E Steering Board (hereafter ‘document 1’);
- Briefing for Commissioner Vălean, on the (Virtual) meeting with A4E Steering Board, dated 25 March 2021, (hereafter ‘document 2’), which includes the following annex:
  - A4E agenda of the A4E Steering Board meeting with Commissioner Vălean on 25 March 2021 (hereafter ‘document 2.1’).

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup> (hereinafter ‘Regulation (EC) No 1049/2001’), I have come to the conclusion that documents 1, 2 and 2.1 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.

With regard to document 2, a complete disclosure of the identified document is prevented by the exception of Article 4(3) of Regulation (EC) No 1049/2001, because parts of it concern matters on which a decision has not been taken by the Commission.

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*”.

Indeed, the disclosure of these parts of document 2 would seriously undermine the decision-making process of the Commission, as it would reveal preliminary views and policy options, which are currently under consideration; the Commission’s services must be free to explore all possible options in preparation of a decision free from external pressure.

The exception laid down in Article 4(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.

Therefore, I conclude that, pursuant to Article 4(3) of Regulation (EC) No 1049/2001, access cannot be granted to the parts of this document that would undermine the Commission’s decision-making process.

With regard to documents 1, 2 and 2.1, a complete disclosure of the identified documents is prevented by the exception concerning the protection of privacy and the integrity of the

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<sup>1</sup> 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.

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;
- other information relating to an identified or identifiable natural person, 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 and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC<sup>2</sup> ('Regulation 2018/1725'; 'the Data Protection Regulation').

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 data<sup>3</sup>.

In its judgment in Case C-28/08 P (Bavarian Lager)<sup>4</sup>, 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<sup>5</sup>.

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, it is not established that these conditions are fulfilled.

Moreover, 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

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<sup>2</sup> 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.

<sup>3</sup> 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.

<sup>4</sup> Judgment of 29 June 2010 in Case C-28/08 P, Commission v Bavarian Lager, ECLI:EU:C:2010:378, paragraph 63.

<sup>5</sup> 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.

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 Data Protection Regulation, 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 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 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 disclosure of the personal data concerned.

Please note that documents 1 and 2.1 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 document 2 was drawn up for internal use under the responsibility of the relevant service of the Directorate-General for Mobility and Transport. It does not reflect the position of the Commission and cannot be quoted as such.

*Meeting between the Cabinet members of Commissioner Vălean and A4E on 23 March 2021:*

We regret to inform you that the Commission does not hold any documents that would correspond to the description given in your application. No member of the Cabinet of Commissioner Vălean held any meeting with A4E on 23 March 2021.

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

Given that no such documents, corresponding to the description given in your application, are held by the Commission, the Commission is not in a position to fulfil your request.

Meeting between the Cabinet members of Commissioner Vălean and Delta Airlines on 22 March 2021:

We regret to inform you that the Commission does not hold any documents that would correspond to the description given in your application. No member of the Cabinet of Commissioner Vălean held any meeting with Delta Airlines on 22 March 2021.

As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution.

Given that no such documents, corresponding to the description given in your application, are held by the Commission, the Commission is not in a position to fulfil your request.

*Conclusion*

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 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](mailto:sg-acc-doc@ec.europa.eu).

The COVID-19 outbreak undoubtedly has an impact on the process of handling access to documents requests under Regulation (EC) No 1049/2001. Given large-scale teleworking of the Commission services, all replies, which should normally be sent via registered post, currently are sent only by e-mail. In this regard, we kindly ask you to confirm receipt of this email.

Yours faithfully,

(e-signed)

Henrik HOLOLEI

Attachments: 3