



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

Directorate E - Aviation

Brussels
MOVE

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Subject: Your application for access to documents – GESTDEM 2021/4405

Dear Sir,

We refer to your application of 30 June 2021 in which you make a request for access to documents, registered on 6 July 2021 under the abovementioned reference number, as well as to our holding reply dated 28 July.

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 08/06/2021 on Fitfor55.

2.Meeting with Boeing on 16/06/2021 on post-COVID recovery.”

I consider your request to cover documents held up to the date of your initial application, i.e. 30 June 2021. I also consider your request to cover meetings held between the Director-General of DG MOVE and the organisations concerned, given that we did not identify any meetings between members of the Cabinet of Commissioner Vălean and those organisations on the dates mentioned in your request.

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

- As regards the meeting between the Director-General of DG MOVE, Henrik Hololei, and Airlines4Europe on 8 June 2021:
 - Briefing for the meeting between the Director-General and Airlines4Europe (document 1);
 - Report of the meeting between the Director-General and Airlines4Europe (document 2).

- As regards the meeting between the Director-General of DG MOVE, Henrik Hololei, and Boeing on 16 June 2021:
 - Briefing for the meeting between the Director-General and Boeing (document 3);
 - Background note – Economic situation of the aviation industry (document 4);
 - Flash report on the meeting between the Director-General and Boeing (document 5)

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents¹ (hereinafter ‘Regulation (EC) No 1049/2001’), I have come to the conclusion that documents 2 and 4 may be fully disclosed, and that documents 1, 3 and 5 may be partially disclosed. Some parts of documents 1, 3 and 5 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 documents 1 and 3, their complete disclosure is prevented by the exception to the right of access laid down in Article 4(3) of Regulation (EC) No 1049/2001.

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 these parts of documents 1 and 3 would seriously undermine the decision-making process of the Commission, as it would reveal preliminary views and policy options of this institution; the Commission’s services must be free to explore all possible options in preparation of a decision free from external pressure. These documents contain opinions of the services of the Commission, the disclosure of which would reveal the substance of this institution’s internal discussions; that disclosure would

¹ 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.

risk seriously undermining the decision-making freedom of the Commission, even in the case where the decision has already been taken, as 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 process².

The exception laid down in Article 4(3) of Regulation (EC) No 1049/2001 applies 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 these documents that would undermine the Commission's decision-making process.

With regard to documents 1, 3 and 5, a complete disclosure of the identified documents is also 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 and contact information of Commission staff members not pertaining to the senior management;
- the names 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 and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC³ ('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 data⁴.

² Judgment of the General Court of 15 September 2016, Case T-18/15 - *Philip Morris v Commission*, ECLI:EU:T:2016:487, paragraph 87.

³ 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.

⁴ 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.

In its judgment in Case C-28/08 P (Bavarian Lager)⁵, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁶.

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 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.

⁵ Judgment of 29 June 2010 in Case C-28/08 P, *Commission v Bavarian Lager*, ECLI:EU:C:2010:378, paragraph 63.

⁶ 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.

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 all of these documents were drawn up for internal use under the responsibility of the relevant services of the Directorate-General for Mobility and Transport. Documents 2 and 5 solely reflect the author's interpretation of the interventions made and does not set out any official position of the third parties to which the document refers, which were not consulted on its content. These documents 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 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.

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

Enclosure:

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- Briefing for the meeting between the Director-General and Airlines4Europe (document 1);
- Report of the meeting between the Director-General and Airlines4Europe (document 2);
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