



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 2021/4489

Dear Sir,

We refer to your application dated 6 July 2021 in which you make a request for access to documents, registered on 12 July 2021 under the abovementioned reference number, as well as to our holding reply dated 2 August 2021.

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 Commissioner Adina-Ioana Vălean or the Cabinet members of Commissioner Adina-Ioana Vălean with multiple organisations.

- 1. Meeting with CMA CGM on the 10/09/2020 on R&D/decarbonization strategy; upcoming maritime regulatory agenda (IMO, MRV, EU ETS, FuelEU Maritime)*
- 2. Meeting with CMA CGM on the 23/01/2020 on présenter le Groupe CMA CGM, ses engagements en faveur de la transition écologique et d'aborder les aspects maritimes du Pacte Vert pour l'Europe (mise en place d'un ETS spécifique et d'un mécanisme de compensation carbone aux frontières de l'UE, révision de la directive sur la fiscalité énergétique, mesures de soutien aux modes massifiés et au développement des carburants alternatifs, révision de la directive sur le transport combiné...)*
- 3. Meeting with Fédération Internationale de l'Automobile (FIA) on the 24/03/2021 on Conversation with FIA 1 Euroboard on the SSMS”.*

We consider your request as covering documents held up to the date of your initial application, i.e. 6 July 2021.

As regards the Meeting with CMA CGM on 10 September 2020 and the Meeting with Fédération Internationale de l'Automobile (FIA) on 24 March 2021

As regards these two meetings, we have identified the following documents as falling within the scope of your application:

- **Annex 1:** E-mail exchange between personnel of CMA CGM, staff and Members of the Cabinet of Commissioner Vălean between 6 July and 4 September 2020, with the subject matter “*Memo on CMA CGM's decarbonization strategy and regulatory concerns*”;
- **Annex 2:** Memo on CMA CGM’s decarbonization strategy;
- **Annex 3:** E-mail from a representative of CMA CGM dated 16 September 2020, with the subject matter “*Follow-up meeting CMA CGM - DG MOVE*”;
- **Annex 4:** Presentation of CMA CGM’s R&D roadmap;
- **Annex 5:** E-mail exchange between representatives of the Fédération Internationale de l'Automobile (FIA), staff and members of the Cabinet of Commissioner Vălean between 21 September 2020 and 17 March 2021, with the subject matter “*Commissioner Valean - FIA Region I*”;
- **Annex 6:** Agenda for the Euroboard Meeting, FIA of 24 March 2021;
- **Annex 7:** Speech of Commissioner Vălean for the Euroboard Meeting, FIA of 24 March 2021
- **Annex 8:** Briefing for Commissioner Vălean for the Euroboard Meeting, FIA of 24 March 2021
- **Annex 9:** List of questions from FIA to Commissioner Vălean, and their answers.

We have come to the conclusion that the documents identified as **Annexes 7 and 9** may be disclosed. Please find enclosed a copy of the documents requested.

As regards **Annexes 1, 2, 3, 4, 5, 6 and 8**, we have come to the conclusion that they may be partially disclosed. A complete disclosure of these documents is prevented, firstly, 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 regarding public access to European Parliament, Council and Commission documents¹ (hereinafter ‘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

¹ OJ L 145, 31.5.2001, p. 43.

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/EC² (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 data³.

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 applicable⁵.

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 to 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 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”.

² 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).

³ 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.

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

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 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 (EU) 2018/1725.

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 these 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 these 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.

As regards **Annex 2**, a complete disclosure of this document is also 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”*.

Following an examination of this document under the provisions of Regulation (EC) No 1049/2001, and taking into account the opinion of the company from which the document originates, certain parts of this document have been redacted, as they contain commercially sensitive business information of that company. After being consulted, the company specifically objected to the disclosure of those parts of this document, having motivated its position with the fact that their disclosure would undermine its commercial interests. Indeed, the data concerned by the redactions are key indicators of commercial activities of the company that are not publicly available, and indicators of the company's business strategy which, if disclosed, would undermine its commercial interests.

The exceptions laid down in Article 4(2) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in the disclosure of the documents. In the case at

hand, there is no reason to assume that there is an overriding public interest to fully disclose the concerned document.

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

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 Annexes 7, 8 and 9 were drawn up for internal use under the responsibility of the Directorate-General for Mobility and Transport. They do not reflect the position of the Commission and cannot be quoted as such.

As regards the Meeting with CMA CGM on 23 January 2020

Concerning the meeting with CMA CGM on 23 January 2020 to which you refer on your application, we regret to inform you that the Commission does not hold any documents that would correspond to such a meeting.

As specified in Article 2(3) of Regulation (EC) No 1049/2001 regarding public access to documents, 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.

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 Secretariat-General of the Commission at the following address:

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

The COVID-19 outbreak undoubtedly has an impact on the process of handling access to documents requests under Regulation (EC) No 1049/2001. Given the 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,

Henrik HOLOLEI

Enclosure: **Annex 1:** E-mail exchange between representatives of CMA CGM, staff and Members of the Cabinet of Commissioner Vălean between 6 July and 4 September 2020, with the subject matter “*Memo on CMA CGM's decarbonization strategy and regulatory concerns*” (redacted);

Annex 2: Memo on CMA CGM’s decarbonization strategy (redacted);

Annex 3: E-mail from a representative of CMA CGM dated 16 September 2020, with the subject matter “*Follow-up meeting CMA CGM - DG MOVE*” (redacted);

Annex 4: Presentation of CMA CGM’s R&D roadmap (redacted);

Annex 5: E-mail exchange between representatives of the Fédération Internationale de l'Automobile (FIA), staff and members of the Cabinet of Commissioner Vălean between 21 September 2020 and 17 March 2021, with the subject matter “*Commissioner Valean - FIA Region I*” (redacted);

Annex 6: Agenda for the Euroboard Meeting, FIA of 24 March 2021 (redacted);

Annex 7: Speech of Commissioner Vălean for the Euroboard Meeting, FIA of 24 March 2021;

Annex 8: Briefing for Commissioner Vălean for the Euroboard Meeting, FIA of 24 March 2021 (redacted);

Annex 9: List of questions from FIA to Commissioner Vălean and their answers.