



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR MOBILITY AND TRANSPORT

Directorate B - Investment, Innovative & Sustainable Transport
B.4 - Sustainable & Intelligent Transport

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Rebecca Vaughan,
1 Long Lane
London
United Kingdom

*Sent by email with
acknowledgement of receipt to :*
ask+request-11026-
a32de6f5@asktheeu.org

Dear Mrs Vaughan,

Subject: Your application for access to documents – GESTDEM 2022/2247

We refer to your e-mail of 15 April 2022 in which you make a request for access to documents, registered on 19 April 2022 under the above-mentioned reference number, as well as to our holding reply dated 6 May 2022.

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 meeting:

Between cabinet members of Commissioner Adina Vălean and Atlantia on 30/03/2022;

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

- **Annex 1** : Email exchange between a representative of Atlantia and members of the Cabinet of Commissioner Vălean concerning a meeting request, between 7 February and 4 April 2022, with the reference Ares(2022)1053020, being that the first e-mail contains the following attachment:
 - **Annex 1.1:** Letter with the subject matter “*Introduction of Atlantia and request for a meeting*”, dated 2 February 2022.

- **Annex 2:** Email exchange between a representative of FTI Consulting and Members of the Cabinet of Commissioner Vălean, between 24 and 30 March 2022 with the subject “*RE: Atlantia meeting confirmation - 30 March at 12.00*”, with the reference Ares(2022)1053020, containing the following attachment:
 - **Annex 2.1:** table sheet indicating the list of participants for the meeting held on 30 March 2022;
- **Annex 3:** Flash note concerning the meeting held on 30 March 2022 between cabinet members of Commissioner Adina Vălean and Atlantia, with the reference Ares(2022)3238199;
- **Annex 4:** Email from a representative of Atlantia to a Member of the Cabinet of Commissioner Vălean with the subject matter “*Ringraziamento e next steps*”, dated 31 March 2022, with the reference Ares(2022)1053020.

Concerning all documents listed above, we have come to the conclusion that they may be partially disclosed. A complete disclosure of the identified 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 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 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/EC² (hereinafter ‘Regulation (EU) 2018/1725’, or ‘Data Protection Regulation’).

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.

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).

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 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 Regulation (EU) 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 (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 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

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.

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 therefore 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 the 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 it. The European Commission does not assume any responsibility from their reuse.

Please also note that the disclosed flash report was drawn up for internal use under the responsibility of the relevant officials of the Directorate-General for Mobility and Transport. It solely reflects the author's interpretations 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 their content. 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 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,

Kristian HEDBERG
Head of Unit

Enclosure: 6 annexes.