



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 2022/1047

Dear Madam,

We refer to your application dated 14 February 2022 in which you make a request for access to documents, registered on 18 February 2022 under the abovementioned reference number.

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 Commissioner Adina-Ioana Vălean with multiple organisations*”. One of the meetings you refer to in your application is a “*Meeting with Rolls-Royce Power Systems AG on 23/11/2021 on FuelEU Maritime*”.

Please note that due to the wide scope of your request, covering also areas falling under the responsibility of other units of the Directorate-General for Mobility and Transport (DG MOVE), parts of your request have been attributed to other units¹. This reply relates only to the documents concerning the “*Meeting with Rolls-Royce Power Systems AG on 23/11/2021*”. You will receive the replies from the other respective units of DG MOVE in due course.

Having examined your request, we have not identified any documents that would correspond to the description given in your application, as we have no records of any meeting held between cabinet members of Commissioner Adina-Ioana Vălean and Rolls-Royce Power Systems AG in the date in question. We do however have knowledge of a meeting held between Henrik Hololei, Director-General of DG MOVE, and Rolls-Royce

¹ In particular, the request registered under the reference number GESTDEM 2022/1046.

Power Systems AG on 23 November 2021. We will therefore interpret your request as referring to documents related to this meeting.

In light of the above, we have identified the following documents as falling within the scope of your application:

- **Annex 1:** Briefing for Director-General Henrik Hololei for the meeting to be held with Rolls-Royce Power Systems AG on 23 November 2021;
- **Annex 2:** Flash Note from the meeting held by Director-General Henrik Hololei with Rolls-Royce Power Systems AG on 23 November 2021.

As regards both documents listed above, we have come to the conclusion that they may be partially disclosed. Firstly, a complete disclosure of these documents is 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 regarding public access to European Parliament, Council and Commission documents² (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 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 (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 data⁴.

² OJ L 145, 31.5.2001, p. 43.

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 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”.

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

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 (EU) 2018/1725.

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.

Furthermore, some parts of these documents have also been redacted as 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 Rolls-Royce Power Systems AG, which if put in the public domain, could affect its competitive position on the market. More specifically, this document contains information on business plans of this company, specific commercial strategies, supporters of projects, and concerns related to certain markets and technical solutions explored by this company, which, if made public, could definitely undermine the achievement of its commercial purposes and objectives.

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

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. We have examined whether there could be overriding public interests in the disclosure of the documents concerned by this request. However, we have not been able to identify such interests.

Please note that the disclosed briefing and flash note of the meeting 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' or the services' 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 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,

(e-signed)

Henrik HOLOLEI

Enclosure: Annexes 1 and 2, better described above.