



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 2022/1046

Dear Madam,

We refer to your application of 14 February 2022 in which you make a request for access to documents, registered on 18 February 2022 under the abovementioned reference number, as well as to my services' holding reply of 9 March 2022.

In your e-mail, which has the subject matter "*Meetings of Director-General Henrik Hololei with industry*", 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.

1.Meeting with Airlines for Europe (A4E) on 14/01/2022 on the COVID recovery; sustainability; passenger rights & international aviation

2.Meeting with Global Business Travel Association (GBTA) on 19/11/2021 on COVID and safe travel

(...)

4.Meeting with Wizz Air Group on 22/11/2021 to discuss Recovery, Slots, SES".

Please note that due to the wide scope of your request, covering also areas falling under the responsibility of different units of the Directorate-General for Mobility and Transport (DG MOVE), a part of your request has been dealt with separately¹. This reply relates only to the documents that concern the meetings listed above. You received the reply concerning the other meeting listed in your request in 9 March 2022.

¹ In particular, the request registered under the reference number GESTDEM 2022/1047, concerning a "*Meeting with Rolls-Royce Power Systems AG on 23/11/2021*".

I consider your request to cover documents held up to the date of your initial application, i.e. 14 February 2022. I also consider your request as referring to meetings held between myself and the organisations concerned, as we have no records of meetings held between cabinet members of Commissioner Adina-Ioana Vălean and those same organisations in the dates in question. Moreover, since I did not hold any meeting with the Global Business Travel Association (GBTA) on 19 November 2021, I consider your request as referring to the meeting held with GBTA on 29 November 2021.

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

Meeting with Airlines for Europe (A4E) on 14/01/2022

- Memory jogger prepared by my services for the meeting with A4E, dated 13 January 2022 (hereafter ‘document 1’),
- A4E points for discussion addressed to me, dated 13 January 2022 (hereafter ‘document 2’),
- Answers prepared by my services to A4E points for discussion, dated 13 January 2022 (hereafter ‘document 3’),

Meeting with the Global Business Travel Association (GBTA) on 29/11/2021

- Meeting request made by Grayling on behalf of GBTA, dated 20 September 2021 (hereafter ‘document 4’),
- Briefing for the meeting with GBTA, dated 26 November 2021 (hereafter ‘document 5’),
- Email of 7 December 2021 on the follow-up on Sustainable Aviation Fuels sent by Grayling on behalf of GBTA (hereafter ‘document 6’), which includes the following annex:
- GBTA Policy Statement of November 2021 (hereafter ‘document 6.1’),

Meeting with the Wizz Air Group (Wizz Air) on 22/11/2021

- Meeting request made by Wizz Air, dated 19 October 2021 (hereafter ‘document 7’)
- MOVE reply to Wizz Air’s request for topics for discussion, dated 17 November 2021 (hereafter ‘document 8’)
- Briefing for the meeting with Wizz Air, dated 18 November 2021 (hereafter ‘document 9’).

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents² (hereinafter ‘Regulation (EC) No 1049/2001’), I have come to the conclusion that **document 6.1** may be fully disclosed, and that all other documents may be partially

² 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.

disclosed. Some parts of **documents 1, 2, 3, 4, 5, 6, 7, 8 and 9** 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 2 and 3**, a complete disclosure is prevented by the exception to the right of access laid down in Article 4(1)(a), third indent of Regulation (EC) No 1049/2001.

Article 4(1)(a), third indent of Regulation (EC) 1049/2001 establishes that *“1. The institutions shall refuse access to a document where disclosure would undermine the protection of: (a) the public interest as regards: (...) — international relations (...);”*

Some redacted parts of documents 2 and 3 have been identified as containing sensitive information which, if disclosed, could seriously undermine the protection of the public interest as regards international relations. Indeed, parts of these documents relate directly to matters that will be the subject of upcoming negotiations in the run-up and during the 41st Assembly of the International Civil Aviation Organization (ICAO), to be held in September/October 2022. Given the fact that the disclosure of the documents takes place *erga omnes*, the release of certain parts of these documents to the public at this moment in time could be detrimental to the international relations between the European Union and certain third countries, or between the European Union and certain international organisations (i.e. the International Civil Aviation Organization), as they would reveal preliminary policy views and options of the Commission that are not yet in the public domain. There is a clear and foreseeable risk that the disclosure of such information, given its sensitivity, could bring harmful consequences to the European Union relations to the authorities of those States and international organisations (i.e. the International Civil Aviation Organization). Moreover, the disclosure of the concerned parts of the document would be detrimental to the serenity and confidentiality of the upcoming negotiations.

Therefore, the exception laid down in Article 4(1)(a), third indent of Regulation (EC) No 1049/2001 applies to certain parts of these documents.

In addition, with regard to document 3, a complete disclosure of the identified document is also prevented by the exception of the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001, because parts thereof concern matters on which a decision has not yet been taken by the Commission.

Pursuant to the first subparagraph of 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, first, this document contains opinions of the Commission services on positions still to be adopted by this institution on the context of international negotiations. The Commission services must be free to explore all possible options in preparation of a decision free from external pressure; the disclosure of such positions, at this moment in time, would risk seriously undermining the decision-making freedom of the Commission, as it could deter staff from formulating such positions independently, and without being unduly influenced by the prospect of wide disclosure.

Second, the disclosure of a specific part of document 3 would seriously undermine the decision-making process of the Commission in relation to the interpretation of the

“justified non-use of slots” exception set out in Article 10(4)(e) of the Slot Regulation³ and to whether or not to extend slot relief to the winter 2022/2023 scheduling period and in which form, as it would reveal preliminary views and policy options which are currently under consideration. More specifically, the disclosure of that part of the document would reveal internal views at services’ level on the implementation of the justified non-use of slots exception that have not yet been endorsed at Commission level, and which may trigger strong reactions from stakeholders. The Commission’s services must be free to explore all possible options in preparation of a decision free from external pressure. Moreover, the disclosure of such positions would risk seriously undermining the decision-making freedom of the Commission as it would deter staff from formulating them independently, and without being unduly influenced by the prospect of wide disclosure. Therefore, the exception laid down in Article 4(3), first subparagraph of Regulation (EC) No 1049/2001 also applies to this document.

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 this document that would undermine the Commission’s decision-making process.

Finally, a complete disclosure of documents 1, 3, 4, 5, 6, 7, 8 and 9 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, 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/EC⁴ (hereinafter ‘Regulation 2018/1725’, or ‘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

³ Council Regulation (EEC) No 95/93 of 18 January 1993 on common rules for the allocation of slots at Community airports OJ L 14, 22.1.1993, p. 1–6

⁴ 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.

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 data⁵.

In its judgment in Case C-28/08 P (Bavarian Lager)⁶, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data Protection Regulation becomes fully applicable⁷.

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

⁵ 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.

⁶ Judgment of 29 June 2010 in Case C-28/08 P, Commission v Bavarian Lager, ECLI:EU:C:2010:378, paragraph 63.

⁷ 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.

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 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 documents 1, 3, 5 and 9 were drawn up for internal use under the responsibility of the relevant service of the Directorate-General for Mobility and Transport. They solely reflect the authors' or the services' interpretation of 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 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

Attachments: 10