Subject: Your application for public access to documents – EASE 2024/0180

Dear Mr Miailhes,

I refer to your application dated 11 January 2024, registered on the same date under the above mentioned EASE reference number, in which you make a request for public access to documents under Regulation (EC) No 1049/2001 (‘Regulation 1049/2001’).

1. SCOPE OF YOUR REQUEST

You have been requesting public access to the following documents:

‘All documentation (including but not limited to all email correspondence, attendance lists, agendas, background papers, transcripts and recordings) AND the meeting minutes/notes relating to:
– the meeting between Caroline Boeshertz (Cabinet member) and Orano on 02-02-2023’.

We have identified two documents falling within the scope of your request:

01 – Ares (2023)1308850 – Meeting request;
02 – Ares (2023)1714546 – Meeting minutes.

For details and numbering kindly refer to the enclosed annex document ‘List of identified documents and type of disclosure’.

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2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION 1049/2001

Having examined the requested documents under the applicable legal framework, I am pleased to grant you partial access to both identified documents, with personal data redacted as regards both documents, and with additionally commercial interests to be protected for one specific part of document 1.

A complete disclosure of the 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 1049/2001, and additionally by the exception concerning the protection of commercial interests under Article 4(2), first indent of Regulation 1049/2001, as regards document 1 (for details please see below).

Copies of the accessible documents in their redacted version are enclosed to the present letter.


2.1.1. ‘Personal data’

Article 4(1)(b) of Regulation 1049/2001 provides that ‘[[t]he institutions shall refuse access to a document where disclosure would undermine the protection of: […] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data].’

The applicable legislation in this field is Regulation (EU) No 2018/1725 (hereafter ‘Regulation 2018/1725’ or ‘Data Protection Regulation’).

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 data. Please note in this respect that the names, signatures, functions, email addresses, telephone numbers etc., and/or initials pertaining to staff members of an institution are to be considered personal data, as well as those of individuals belonging to third parties.

We disclose the identified documents 1 and 2 only partially, as they contain certain personal data, which must be redacted in accordance with Article 4(1)(b) of Regulation 1049/2001, namely:

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– the names_INITIALS and contact information of Commission staff members not pertaining to the senior management;
– the names/initials and/or contact details of other natural persons – other than Commission staff members;
– other information relating to an identified or identifiable natural person.

2.1.2. Question of ‘transfer’ of personal data and conclusion

Article 9(1)(b) of Regulation 2018/1725 does not allow the transmission of these personal data, except if you prove that it is necessary to have the data transmitted to you for a specific purpose in the public interest and where there is no reason to assume that the legitimate interests of the data subject might be prejudiced. 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.

Consequently, I conclude that, pursuant to Article 4(1)(b) of Regulation 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 as 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.

2.2. PROTECTION OF COMMERCIAL INTERESTS (DOCUMENT 1) – ARTICLE 4(2), FIRST INDENT OF REGULATION 1049/2001

2.2.1. Relevance of Article 4(2), first indent of Regulation 1049/2001 in relation to document 1

Article 4(2), first indent of Regulation 1049/2001 provides that ‘[t]he 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’.

While not all information concerning a company and its business relations can be regarded as falling under the exception of Article 4(2), first indent⁵, it appears that the type of information covered by the notion of commercial interests would generally be of the kind protected under the obligation of professional secrecy⁶. Accordingly, it must be information that is ‘known only to a limited number of persons’, ‘whose disclosure is liable to cause serious harm to the person who has provided it or to third parties’ and for which ‘the interests liable to be harmed by disclosure must, objectively, be worthy of protection’⁷.

Document 1 refers to publicly undisclosed sensitive information about the business diversification strategy of a third party, i.e. the document originator. The release of such

⁶ See Article 339 of the Treaty on the Functioning of the European Union.
information would undermine the protection of the commercial interests of this third party.

Therefore, the respective parts of document 1 need to be protected, and accordingly be redacted under the first indent of Article 4(2) of Regulation 1049/2001.

2.2.2. Question of overriding public interest

The exception of Article 4(2), first indent (protection of commercial interests of a natural or legal person, including intellectual property) of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the document. Such an interest must, first, be public and, secondly, outweigh the harm caused by a disclosure.

Accordingly, we have considered whether the risks attached to the release of the withheld part of the document 1 are outweighed by the public interest in accessing the requested document. We have not been able to identify any such public interest capable of overriding the commercial interests of the companies concerned. In the present case, there is no such evidence.

3. DISCLAIMER(S)

Please kindly pay attention to the following: you may reuse public documents, which have been produced by the European Commission or by public and private entities on its behalf, based on Commission Decision 2011/833/EU of 12 December 2011 on the re-use of Commission documents. You may reuse the documents disclosed free of charge for non-commercial and commercial purposes, provided that the source is acknowledged, and that you do not distort the original meaning or message of the documents. Please note that the Commission does not assume any liability stemming from the reuse.

Furthermore, please note that documents containing content of third-party origin, i.e. either documents originating from third parties or documents containing parts of third party origin (in the present case: documents 1) are disclosed to you based on Regulation 1049/2001. However, disclosure of such third-party content 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 the reuse of those documents or parts of documents.

Finally, document 2 was drawn up under the responsibility of the relevant official. It solely reflects the author's interpretation of the interventions made and does not set out any official position of the third party to which the document refers, which was not consulted on its content. It does not necessarily reflect the position of the Commission and, therefore, cannot be quoted as such.

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4. POSSIBILITY OF A CONFIRMATORY APPLICATION

In accordance with Article 7(2) of Regulation 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, either by

- **asking for a review via your portal account** (available only for initial requests submitted via the portal account), or
- **email** to sg-acc-doc@ec.europa.eu, or
- **letter post** to the following address:
  
  European Commission
  Secretariat-General
  ‘Transparency, Document Management & Access to Documents’ (unit SG C.1)
  BERL 7/76
  Rue de la Loi 200/Wetstraat 200
  1049 Brussels
  BELGIUM.

Yours sincerely,

Sabine WEYAND

Enclosures: (3) Annex ‘List of identified documents and type of disclosure’;
2 documents (*partially redacted*).