Subject: Your application for access to documents – EASE Case 2024/0374

Dear Ms Ewbank,

We refer to your request for access to European Commission documents registered on 23 January 2024 under the above-mentioned 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 between DG MOVE and Airbus:

1. Airbus and Director General Magdalena Kopczynska on 12/09/2023 on 'Airbus operations in Europe - Company's decarbonisation strategy'.”

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

- **Annex 1**: Email exchange between Airbus and the European Commission on the topics and formalities of the meeting, dated between 22 and 30 August 2023. Ref: Ares(2024)545820;

- **Annex 2**: Briefing prepared for Director-General Magda Kopczyńska by DG MOVE for the meeting to be held on 12 September 2023. Ref: Ares(2024)545820;

- **Annex 3**: Summary Record of the meeting between Airbus and Director-General Magda Kopczyńska, held on 12 September 2023. Ref: Ares(2024)545820.

Regarding the 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 the individual outlined in Article 4(1)(b) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (1) (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/EC (2) (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 data (3).

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 applicable (5).

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.

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(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.
According to Article 47(1) of this Regulation, a transfer of personal data to a third country or an international organization may take place where the Commission has decided that the third country, a territory or one or more specified sectors within that country 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, the United Kingdom, is recognised by the Commission as ensuring an adequate level of protection. However, we would further like to inform you that according 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 express a particular interest to have access to an attendance list of the meeting on 12 September 2023. However, you do not 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 subjects’ 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, some parts of this document have also been redacted because their disclosure is prevented by the exception to the right of access laid down in the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001.

Article 4(3), first paragraph of this Regulation sets out that “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”.

The redacted parts of Annex 2 concern the so-called Single European Sky Package (hereinafter ‘SES2+’), referring to deliberations and consultations with and between Member States in the context of the inter-institutional negotiations. They relate to matters in which a final decision has not yet been taken by the Union institutions. Indeed, SES2+ is a particularly sensitive proposal, given that its implementation may have relevant political and economic impacts on the Member States and, as such, negotiations have already taken a long time. The disclosure of this information at this moment in time is likely to bring serious harm to the decision-making process of the institutions, in a foreseeable and non-hypothetical way.

The redacted parts further contain internal opinions on the SES2+ negotiations expressed by European Commission staff. The disclosure of such opinions could deter staff from formulating them without being unduly influenced by the prospect of wide disclosure exposing the institution of which they are part. The possibility of expressing views independently within the institution is necessary to encourage internal discussions with a view to improving the functioning of the institutions, exploring all possible options and contributing to the smooth running of its decision-making process (6).

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. We have examined whether there could be an overriding public interest in disclosure of the redacted parts of these documents. However, we have not been able to identify in this case any other public interest capable of overriding the public interests protected by Article 4(3) of this Regulation.

Therefore, the exception laid down in Article 4(3), of Regulation (EC) No 1049/2001 applies to some redacted parts of these documents.

Please note that the disclosed summary record of a meeting was drawn up for internal use under the responsibility of the relevant officials of the Directorate-General for Mobility and Transport. The summary record solely reflects the author’s interpretation of the interventions made and does not set out any official position of Airbus, which was not consulted on its content. The document does not reflect the position of the Commission and cannot be quoted as such.

Please also note that the disclosed briefing of a meeting was drawn up for internal use under the responsibility of the relevant services of the European Commission. It solely reflects the authors’ interpretation of the considerations made and does not set out any official position of the third parties to which the document refers. It also does not reflect the position of the Commission and cannot be quoted as such. The mere existence of a briefing does not imply that its content was necessarily used during the meeting for which it was drafted.

Please further note that the document originating from Airbus (Annex 1) is 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.

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 to the Secretariat-General of the Commission within 15 working days upon receipt of this letter. You can submit it **by mail:**

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

Yours sincerely,

Magda KOPCZYŃSKA  
Director-General

Enclosure: 3 Annexes