Subject: Your application for access to documents – EASE 2024/3098

Dear Mr Ewbank,

We refer to your request for access to European Commission documents registered on 11 June 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 correspondence regarding Non-CO2 impacts of aviation, particularly in the context of the implementing act on the EU ETS monitoring, reporting and verification scheme. This may include, but is not limited to, correspondence pertaining to "non-CO2 impacts" and "non-CO2 effects" and "contrails" and "monitoring, reporting and verification" and "MRV". I request all documentation on this from the following entities between 01/09/2023 and the date of fulfilment of this request.

- Airlines for America
- Airlines for Europe
- Lufthansa
- International Airlines Group
- Air France-KLM
- easyJet
- Ryanair
- Wizz Air
- Penta Group
- Airlines UK
- International Air Transport Association
- Emirates Airline
We have considered your request to cover documents held up to the date of your initial application, i.e. 7 June 2024.

We acknowledge that you presented a similar request to the Directorate-General for Climate Action (DG CLIMA)\(^1\). This reply relates only to the documents held by Directorate-General for Mobility and Transport (DG MOVE). You will receive the reply from DG CLIMA to your other request for access to documents in due course.

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

- **Annex 1**: Email exchange between easyJet and DG MOVE with the title “Meeting request - 3 - 7 June - easyJet/Ryanair/Wizz air”, ref. Ares(2024)5161679, with the attached document:
  - **Annex 1.1**: Letter to DG MOVE, dated 14 June 2024, on the scope of the non-CO2 monitoring, reporting, and verification (MRV) system;

- **Annex 2**: Email exchange between the Aerospace, Security and Defence Industries Association of Europe (ASD) and DG MOVE requesting a “Meeting to Discuss Simplified Mrv Proposal with Phased Implementation”, ref. Ares(2024)4959980, with the attached document:
  - **Annex 2.1**: Power point with the title “Proposal for a simplified MRV with a phased implementation”;

- **Annex 3**: Email from the International Air Transport Association (IATA) on Proposed Monitoring, Reporting and Verification of Aviation Non-CO2 Emissions, ref. Ares(2024)2511462, with the attached documents:
  - **Annex 3.1**: Note from IATA on the inclusion of non-CO2 effects into the EU ETS MRV framework;
  - **Annex 3.2**: Letter from IATA to EVP Šefčovič, Commissioner Hoekstra and Commissioner Vălean;

- **Annex 4**: Email exchange between Transport and Environment (T&E) and DG MOVE with the title “Call for action - Preserving full scope of non-CO2 MRV in aviation”, ref. Ares(2024)3259361, with the attached document:
  - **Annex 4.1**: Letter to the European Commission in support of an effective non-CO2 MRV framework in the EU ETS to mitigate non-CO2 effects of aviation;

\(^1\) Registered under EASE number 2024/3035.
- **Annex 5**: Letter from Kurt Vandenberghe, Director-General of DG CLIMA, in reply to IATA, ref. Ares(2024)33631179;

- **Annex 6**: Letter from Kurt Vandenberghe, Director-General of DG CLIMA, in reply to T&E, ref Ares(2024)4794317;

- **Annex 7**: Flash report on the meeting of 15 May 2024 held by DG MOVE with Airlines for America (A4A), ref. Ares(2024)4935804;

- **Annex 8**: Flash report on the meeting of 15 May 2024 held by DG MOVE with Airlines for America (A4A), ref. Ares(2024)3502852;

- **Annex 9**: Minutes of the meeting of 23 April 2024 held by the Cabinet of Commissioner Vălean with International Airlines Group (IAG), ref. Ares(2024)3042970.

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents (2) (hereinafter ‘Regulation (EC) No 1049/2001’), we have come to the conclusion that **Annexes 2.1, 3.1, 4.1 and 6** may be fully disclosed. Please find enclosed copies of these documents.

With regard to the rest of the documents listed above, their complete disclosure is prevented, first, 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 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 (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.

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), or to international organisations 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 organisation 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

---


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.
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 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.

Concerning Annex 1.1 and Annex 9, 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 the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001.

Article 4(3), first subparagraph 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”.

Indeed, certain redacted parts of these documents have been identified as containing particularly sensitive information which, if disclosed, could seriously undermine, in a foreseeable and non-hypothetical way, the internal decision-making process of the Commission. In particular, certain redacted parts of these documents include discussions around airlines’ luggage policies, a subject-matter in which the Commission is still on the process of gathering and assessing all necessary elements with a view to adopt informed decisions, and which is a particularly important part of the revision of Regulation (EC) No 1008/2008 (7), which is a sensitive proposal, and where the impact assessment is currently ongoing.

Also, certain redacted parts of this document reveal relevant information in the context of ongoing discussions around non-CO₂ reporting requirements under the EU Emissions Trading System, currently laid down in Article 14 of Directive 2003/87/EC of the European Parliament and of the Council (8), and which are particularly relevant for the Commission’s decision-making process.

---

Taking into account the sensitivity of the above-mentioned issues, the disclosure of these parts would concretely and effectively bring serious harm to the decision-making process of the Commission, in a foreseeable and non-hypothetical way. It is to be noted, in that regard, that the Union institutions must be free to explore all possible options in preparation of their decisions free from external pressure.

Therefore, the exception laid down in Article 4(3), first subparagraph of Regulation (EC) No 1049/2001 also applies to some redacted parts of this document.

Finally, also concerning Annex 9, some parts of this document have been redacted due to the fact that their disclosure is prevented by the exceptions to the right of access laid down in the second and third indents of Article 4(2) of Regulation (EC) No 1049/2001.

Article 4(2), second and third indents of Regulation (EC) No 1049/2001 establish that “The institutions shall refuse access to a document where disclosure would undermine the protection of (...) - court proceedings and legal advice, - the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure”.

In particular, certain parts of Annex 9 have been redacted as they refer to a measure which forms part of an ongoing investigation conducted by DG COMP (merger M.9637). The disclosure of the relevant parts of this document at this moment in time could undermine the integrity and purpose of the ongoing investigation, which must ensure an independent examination of the matter.

Therefore, the exceptions laid down in Article 4(2), second and third indents of Regulation (EC) No 1049/2001 also apply to redacted parts of this document.

The exceptions laid down in Article 4(2) and (3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents. We have also examined whether there could be an overriding public interest in disclosure of the redacted parts of this document. 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(2) and (3) of Regulation (EC) No 1049/2001.

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 the disclosed minutes and meeting reports 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’ 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. You can submit it by mail, to:

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: 14 Annexes