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DIRECTORATE-GENERAL FOR RESEARCH & INNOVATION

The Director-General

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By registered letter with acknowledgment of receipt

Barbara PELO
Slotermeerlaan 133,
1063 Amsterdam,
Netherlands

Advance copy by e-mail: ask+request-7203-bc5d2c20@asktheeu.org

Subject: Your application for public access to documents – GestDem Ref No 2019/4646

Dear Ms Pelo,

We refer to your application of 8 August 2019 through which you submitted an application for access to documents within the framework of Regulation (EC) 1049/2001¹.

1. SCOPE OF YOUR REQUEST

You requested access to the following:

‘- documents concerning the projects funded by the EU, implemented by Bruno Kessler Foundation (call for applications, evaluation, award decisions)

[...]

- documents or information about relations between this Foundation and G. Kessler, current Advisor at DG BUDG, former OLAF Director General [...]’ .

After examination of the scope of your request, it appeared that the first part of your application concerned a very large number of documents, approximately 180 documents, which would need to be assessed individually. In the light of the fact that such a detailed analysis cannot be carried out within the normal time limits, we informed you by email dated 30 August 2019 that you had submitted a very wide-scoped request. Consequently, we invited you, pursuant to Article 6(3) of Regulation 1049/2001, to propose a fair

¹ 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, 31.5.2001, p. 43), hereinafter referred to as ‘Regulation 1049/2001’.

solution for dealing with your wide-scoped request. We explained that such a fair solution could consist of narrowing down the scope of your request, to reduce it to a more manageable amount of documents. In order to help you narrowing down your request, we indicated 7 categories of documents identified as falling under the scope of the first point of your request, while remaining open to other possible options that would have helped to narrow down the request.

In addition, with regards to the second point of your application, since the description given in your application did not enable us to identify concrete documents, which would correspond to your request, we invited you, pursuant to Article 6(2) of Regulation (EC) No 1049/2001, to provide us with more detailed information on the documents which you seek to obtain.

In your reply of 1 September 2019, you reformulated your request as follows:

“I have decided to ask at this stage for documents mentioned in points I.1, 2, 4. documents mentioned in points I.1, 2, 4”, namely:

- *Award decisions for on-going funded projects submitted by consortia including Bruno Kessler Foundation (Fondazione Bruno Kessler) under Horizon 2020 Framework Programme for Research and Innovation (H2020) ;*
- *Documents concerning the evaluation of the above-mentioned on-going funded projects submitted by consortia including Bruno Kessler Foundation under H2020 ;*
- *Award decisions for funded projects submitted by consortia including Bruno Kessler Foundation under the Sixth Framework Programme for Research and Innovation (FP6)”*

In relation to your above-mentioned request, we have identified 46 documents falling under the scope of your request (hereinafter the 'requested documents'), namely:

- 1) Award Decision for the Horizon 2020 proposal no. 824093, STRONG-2020 – “The strong interaction at the frontier of knowledge: fundamental research and applications”: 2 documents (main document and its annexed list)
- 2) Award Decision for the Horizon 2020 proposal no. 654168, AIDA-2020 – “Advanced European Infrastructures for Detectors at Accelerators”
- 3) Award Decision for the Horizon 2020 proposal no. 654002, ENSAR2 – “European Nuclear Science and Application Research 2”
- 4) Award Decision for the Horizon 2020 proposal no. 731287, INSHIP – “Integrating National Research Agendas on Solar Heat for Industrial Processes”
- 5) Award Decision for the Horizon 2020 proposal no. 754919, UPRIGHT – “Universal Preventive Resilience Intervention Globally implemented in schools to improve and promote mental Health for Teenagers”
- 6) Award Decision for the FP6 proposal no. 26134, ANNA – “European Integrated Activity of Excellence and Networking for Nano and Micro-electronics analysis”
- 7) Award Decision for the FP6 proposal no. 506065, EURONS – “EUROpean Nuclear Structure Integrated Infrastructure Initiative (EURONS)”

- 8) Award Decision for the FP6 proposal no. 37362, NEMO – “Nano based capsule-Endoscopy with Molecular Imaging and Optical Biopsy”;
- 9) Award Decision for the FP6 proposal no. 501848, ISAAC – “Improvement of Safety Activities on Aeronautical Complex systems”
- 10) The Evaluation Summary Report concerning the above-mentioned proposal no. 824093, STRONG-2020;
- 11) The Evaluation Summary Report concerning the above-mentioned proposal no. 654168, AIDA-2020;
- 12) The Evaluation Summary Report concerning the above-mentioned proposal no. 654002, ENSAR2;
- 13) The Evaluation Summary Report concerning the above-mentioned proposal no. 731287, INSHIP;
- 14) The Stage-1 Evaluation Summary Reports concerning the above-mentioned proposal no. 754919, UPRIGHT ;
- 15) The Stage-2 Evaluation Summary Reports concerning the above-mentioned proposal no. 754919, UPRIGHT ;
- 16) 5 Individual Evaluation Reports by the evaluators concerning the above-mentioned proposal no. 824093, STRONG-2020;
- 17) 5 Individual Evaluation Reports by the evaluators concerning the above-mentioned proposal no. no. 654168, AIDA-2020;
- 18) 5 Individual Evaluation Reports by the evaluators concerning the above-mentioned proposal no. 654002, ENSAR2;
- 19) 5 Individual Evaluation Reports by the evaluators concerning the above-mentioned proposal no. 731287, INSHIP;
- 20) 10 Individual Evaluation Reports by the evaluators concerning the above-mentioned proposal no. 754919, UPRIGHT.

2. EXAMINATION UNDER REGULATION (EC) No 1049/2001

2.1. Full access to documents No 1, No 3, No 4 and documents from no 10 to No 15

Having examined the requested documents under the provisions of Regulation (EC) 1049/2001, and taking account of the legitimate interests of any third party concerned, we are pleased to inform you that full access can be granted to these documents. We enclose copies of these documents.

2.2. Partial access to document No 2 and documents from No 5 to No 9

Following examination of the documents, partial access can be granted to these documents. Some information has been withheld as explained below. We enclose copies of these documents, with the relevant redactions.

Protection of privacy and the integrity of the individual

Pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to a (part of a) document has to be refused if 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.

Document No 7 contains personal data, which have been expunged, such as handwritten signature. This information clearly constitutes personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725², 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'*.

According to Article 9(1)(b) of 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 for a specific purpose in the public interest. In your request, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest.

Please note that the exception of Article 4(1)(b) has an absolute character and does not envisage the possibility of demonstrating the existence of an overriding public interest.

Out of scope

Please note that some parts of document No 2 and documents from No 5 to No 9 were not withheld on the basis of an exception of Regulation (EC) No 1049/2001, but because they fell outside the scope of your request. In these documents, references to projects not submitted by consortia including Bruno Kessler Foundation do not fall within the scope of your request and consequently have been redacted.

2.3. No access to documents under reference from No 16 to No 20

We examined the documents referenced under numbers ranging from 16 to 20 and we regret to inform you that disclosure of these documents is precluded under the exception for the protection of the decision-making process laid down in Article 4(3), second paragraph of the above mentioned Regulation, as explained below. We have considered the possibility of granting partial access to the requested documents, however, we came to the conclusion that no meaningful partial access could be granted.

² Regulation 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, Official Journal L 205 of 21.11.2018, page 39.

Protection of the Commission decision-making process

Under the second subparagraph of Article 4(3) of Regulation No 1049/2001, access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned is to be refused even after the decision has been taken if disclosure of the document may seriously compromise the institution's decision-making process, unless there is an overriding public interest in disclosure.

Documents from No 16 to No 20 contain opinions of expert evaluators that are intended for internal use as part of the deliberations and preliminary consultations within the Commission in a decision-making process. The requested documents contain the opinions of the individual experts and relate thus to a very early step within a complex evaluation process at the end of which a funding decision is taken. Public disclosure of the opinions of the expert evaluators, even after the decision-making process has finished, could curtail the future experts' and panel members' "space to think" and might lead to their self-censorship. In turn, the Commission would no longer be able to explore all possible options free from external pressure. Consequently, this would prejudice the Commission's margin of manoeuvre and, thus, undermine the integrity of the decision-making process of the Commission concerning the award of grants.

The exception laid down in Article 4(3) of Regulation (EC) 1049/2001 applies unless there is an overriding public interest in disclosure of the documents. Such an interest must first be a public interest and, second, outweigh the harm caused by disclosure.

In your initial application you did not bring forward any arguments to justify the existence of an overriding public interest in releasing the documents concerning your proposal. Please kindly note that any alleged private interests cannot be taken into account for the purpose of determining whether public access can be granted to the documents under Regulation (EC) 1049/2001. In any event, we have found no elements in this instance, which could indicate the existence of such an overriding public interest in the sense of the Regulation that would outweigh the need to protect the objectivity and independence of the Commission's evaluation proceedings.

3. DISCLAIMER

You may reuse the disclosed documents free of charge, for non-commercial and commercial purposes provided that the source is acknowledged, that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from the reuse.

4. MEANS OF REDRESS

In accordance with Article 7(2) of Regulation (EC) 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
Secretary-General
Unit SG C.1 – Transparency, document management & access to documents
BERL 7/076
B-1049 Brussels
or by email to: sg-acc-doc@ec.europa.eu

Yours sincerely,

Jean-Eric Paquet

Enclosure: requested documents referenced under numbers ranging from 1 to 15.