



EUROPEAN COMMISSION

Executive Agency for Small and Medium-sized Enterprises (EASME)

Department B - LIFE and H2020 Energy, Environment & Resources

Head of Department

Brussels,
EASME.B/PK/MS/CP/B2.4

Mr Völker
Nik@miningwatch.pt
Ask+request-8536-cf240dlb@asktheeu.org

Subject: Your application for access to documents – Ref. Ares(2020)4647913

Dear Mr Völker,

We refer to your e-mail dated 07/09/2020 in which you make a request for access to documents, registered on the same day under the above-mentioned reference number.

You are requesting access to “*documents which contain the following information:*

- *Grant Agreement of Horizon 2020 ID 776811 "MIREU", including any existing addenda, annexes, or subcontracts*”.

Your application falls within the scope of Regulation (EC) 1049/2001¹.

We regret to inform you that EASME does not hold addenda and subcontracts relating to this project. As specified in Article 2(3) of Regulation (EC) No 1049/2001, the right of access as defined in that regulation applies only to existing documents in the possession of the institution. Given that no such documents, corresponding to the description given in your application, are held by EASME, we are not in a position to fulfil this part of your request.

Concerning the remaining of your request, we have identified the following documents:

- Grant Agreement-776811-MIREU (EN)
- Annex 1 - Description of Action (part A) (EN)
- Annex 1 - Description of the action (part B) (EN)
- Annex 2 - Estimated budget of the action (EN)
- Annex 2a - Additional information on the estimated budget of the action (EN)
- Annex 3 - Accession Forms (EN)
- Annex 4 - Model for the financial statements (EN)
- Annex 5 - Model for the certificate on the financial statements (EN)
- Annex 6 - Model for the certificate on the methodology (EN)
- Amendment - AMD -776811 – 4 (EN)

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, Official Journal of the European Union L 145, 31.5.2001, p. 43–48.

- Amendment - AMD - 776811 – 20 (EN)

Since most of the documents concerned originate from the Consortium, it has been consulted on the possibility to release the documents. The opinion of the Consortium was that access to their documents should be denied. They considered that the disclosure of the Grant Agreement and its annexes would undermine the interests of the MIREU project partners, including intellectual property. In addition, the Consortium highlighted that the Grant Agreement and its annexes include various personal data that is protected under EU legislation and the disclosure of which would undermine such protection.

1. Grant Agreement - core text

The document consists of 82 pages. The basis of the Grant Agreement document is the Horizon 2020 General Model Grant Agreement (Multi-beneficiary model GA), which is publicly available².

However, the document also contains personal and commercially sensitive data that cannot be disclosed.

The document contains **personal information** such as names, e-mail addresses and other personal data of the contact persons of contracting parties. 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 EU legislation regarding the protection of personal data.

According to Article 9(1)(b) of the Regulation 2018/1725³, personal data should only be transferred to recipients if they establish the necessity for a specific purpose in the public interest and if it is proportionate to transmit the personal data for that specific purpose and without prejudice to the data subject's legitimate interests. We consider that the necessity of disclosing the aforementioned personal data has not been established and it cannot be assumed that such disclosure is proportionate and would not prejudice the legitimate rights of the persons concerned.

Please note that the exception for Article 4(1)(b) of Regulation 1049/2001 has an absolute character and does not envisage the possibility of demonstrating the existence of an overriding public interest.

The document also contains commercially sensitive data, such as the bank account of the project coordinator. The public disclosure of this information would seriously undermine contracting parties' commercial interests, including security and confidential financial data. Accordingly, the exception in Article 4(2), first indent, of Regulation (EC) No 1049/2001 has to be invoked and access to the document has to be refused.

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, we have considered the possibility of granting partial access to the document requested. However, for the

² https://ec.europa.eu/research/participants/data/ref/h2020/mga/gga/h2020-mga-gga-multi_en.pdf

³ 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 295/39 of 21.11.2018).

reasons explained above, no meaningful partial access is possible without undermining the interest described above

As regards the existence of an overriding public interest in disclosure in relation to the Article 4(2) first indent on the protection of the commercial interests of the beneficiaries, we consider that, on balance, the principle of transparency which underlies the Regulation does not, in the present case, prevail over the above indicated interests so as to justify disclosure of the documents.

In view of the foregoing and of the negative opinion of the Consortium, we are unable to grant you access to the core text of the Grant Agreement.

2. Annex 1 - Description of the action (Parts A and B)

The document consists in 56 pages for Part A and 82 pages for Part B. It contains personal information such as the names, contact details, CV etc. of staff involved in the implementation of the project.

As mentioned above, pursuant to Article 4(1)(b) of Regulation 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 EU legislation regarding the protection of personal data. We consider that the necessity of disclosing the aforementioned personal data is not established and it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Accordingly, access to the personal data has to be refused.

The document also contains **commercially sensitive information** reflecting in detail the project methodology and intended intellectual property rights that are not in the public domain. The public disclosure of this information would seriously undermine its commercial interests, including intellectual property. Accordingly, the exception in Article 4(2), first indent, of Regulation No 1049/2001 has to be invoked and access to this part of document has to be refused.

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, we have considered the possibility of granting partial access to the document requested. Following a careful assessment, we can disclose pages 1, 3, 4, and 5 of the Annex 1 of Part A.

As regards the existence of an overriding public interest in disclosure in relation to the Article 4(2) first indent on the protection of the commercial interests of the beneficiaries, 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 (EC) No 1049/2001 that would outweigh the need to protect the commercial interests of the contracting parties.

In view of the foregoing, we are able to grant you only access to the pages 1, 3, 4 and 5 of the Annex 1 of Part A.

3. Annex 2 - Estimated budget for the action and Annex 2a - Additional information on the estimated budget of the action

Annex 2 and Annex 2a of the Grant Agreement provide budget repartition between budget categories and therefore disclose data on partners' financial policy.

Disclosure of the documents requested would undermine the protection of the commercial interests of the beneficiary, as putting such information in the public domain could deter any future bids from the current beneficiaries of the MIREU Grant Agreement. Accordingly, the exception in Article 4(2), first indent, of Regulation No 1049/2001 has to be invoked and access to the documents has to be refused.

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, we have considered the possibility of granting partial access to the documents requested. However, for the reasons explained above, no meaningful partial access is possible without undermining the interest described above

Therefore, the exception laid down in Article 4(2), first indent of Regulation 1049/2001 applies unless there is an overriding public interest in the disclosure of the requested documents. We were not able to identify any public interest capable of outweighing the need to protect the commercial interests, including the intellectual property, identified in the present letter.

In view of the foregoing and of the negative opinion of the Consortium, we are unable to grant you access to the Annexes 2 and 2a. However, you can consult the template of these documents, which are publicly available⁴.

4. Annex 3 – Accession Forms

The accession forms are the documents by which the beneficiary demonstrate its willingness to join the Consortium. They contain personal data such as the name of the legal representative of the beneficiary.

In accordance with Article 4(1)(b) of Regulation 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 EU legislation regarding the protection of personal data.

We consider that the necessity of disclosing the aforementioned personal data is not established and it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned.

In view of the foregoing, we are unable to grant you access to the accession forms.

However, the template is publicly available at the following link:
https://ec.europa.eu/research/participants/data/ref/h2020/mga/gga/h2020-mga-gga-multi_en.pdf

⁴ Page 117 onwards: https://ec.europa.eu/research/participants/data/ref/h2020/mga/gga/h2020-mga-gga-multi_en.pdf

**5 Annex 4 - Model for the financial statements,
Annex 5 - Model for the certificate on the financial statements and
Annex 6 - Model for the certificate on the methodology.**

These three annexes are templates which are publicly available at the following link⁵: https://ec.europa.eu/research/participants/data/ref/h2020/mga/gga/h2020-mga-gga-multi_en.pdf

5. Amendments

The two amendments relate to modifications of the composition of the Consortium and its impact on the contract implementation which are reflected in Annex 1 on description of the actions and Annex 2 related to the estimated budget. The second amendment also concerns the addition of a linked third party.

Having examined the documents requested under the provisions of Regulation 1049/2001 regarding public access to documents, we regret to inform you that your application cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

The documents contain **commercially sensitive information** reflecting technical and financial aspects of the project implementation that are not in the public domain.

Taking also into consideration the negative opinion of the Consortium, we consider that the public disclosure of this information would seriously undermine its commercial interests, including intellectual property. Accordingly, the exception in Article 4(2), first indent, of Regulation No 1049/2001 has to be invoked and access to the documents has to be refused.

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, we have considered the possibility of granting partial access to the documents requested. However, for the reasons explained above, no meaningful partial access is possible without undermining the interest described above.

As regards the existence of an overriding public interest in disclosure in relation to the Article 4(2) first indent on the protection of the commercial interests of the beneficiaries, we consider that, on balance, the principle of transparency which underlies the Regulation does not, in the present case, prevail over the above indicated interests so as to justify disclosure of the documents.

In view of the foregoing and of the negative opinion of the Consortium, we are unable to grant you access to the amendments.

In addition, we would like to inform you that the published information on the selected project is available on the EASME website at the following link: <https://sc5.easme-web.eu/?p=776811>.

⁵ Page 118 onwards.

Moreover, specific information (e.g. budget, objectives, beneficiaries, public deliverables etc.) on the project is available in CORDIS and on the project specific webpage <https://cordis.europa.eu/project/id/776811>, and the project's website: <https://mireu.eu/>.

In accordance with Article 7(2) of Regulation (EC) No 1049/2001, you are entitled to make a confirmatory application requesting the Director of EASME to review this position.

Such a confirmatory application should be addressed within **15 working days upon receipt of this letter** to the Director of EASME at the following address:

European Commission
EASME
To the attention of Luisa Prista, Director
COV2 12/134
B-1049 Brussels
or by email to: EASME-B2-RAW-MATERIALS@ec.europa.eu

Yours sincerely,

(e-signed)
Patrik Kolar
Head of Department B

Enclosure: Annex 1 of the Grant Agreement 776811 – MIREU: Description of
Action part A (expunged version)