



EUROPEAN COMMISSION
RESEARCH EXECUTIVE AGENCY

Legal Affairs, Internal Control and Reporting
Head of Sector

Brussels,
REA C0.1

Ms Hanna Rullmann
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Sent by registered email to:
ask+request-8490-c302b20e@asktheeu.org

Subject: Your application for access to documents - Ares(2020)4505232

Dear Ms Rullmann,

We refer to your request for access to documents submitted to the Research Executive Agency (REA) on 28 August 2020 via the website AskTheEU.org and registered on 31 August 2020 under reference number Ares(2020)4505232.

A. SCOPE OF YOUR REQUEST

In your application you request:

“1. All deliverable documents so far produced in regards to the FOLDOUT project, and a list of all document titles and reference numbers of these deliverables.

2. In particular the FOLDOUT Early Demonstrator Evaluation (mentioned here: <https://cordis.europa.eu/project/id/787021/reporting>).

3. Minutes of all meetings concerning FOLDOUT. In particular the meeting that took place in Brussels on January 28th, 2020 (mentioned here: [https://urldefense.com/v3/_https://di.mod.bg/en/news/bulgarian-defence-institute-participant-foldout-european-project_!!DOxrgLBm!RBkhyNCYX13E3j1NToVziAlrVSfiA5_sY_4vKpHHovRbVSOP5iIJvMGfnD34jyJhC7d74FE0SFrH\\$](https://urldefense.com/v3/_https://di.mod.bg/en/news/bulgarian-defence-institute-participant-foldout-european-project_!!DOxrgLBm!RBkhyNCYX13E3j1NToVziAlrVSfiA5_sY_4vKpHHovRbVSOP5iIJvMGfnD34jyJhC7d74FE0SFrH$)).

4. Any presentation slides produced by FOLDOUT project partners for use at meetings.

5. Any ethical assessments of the FOLDOUT proposal held by REA.”

On 11 September 2020, after examination of the scope of your request, we have informed you that your application concerned a very large number of documents, which needed to be individually assessed, and the majority of which originates from third parties, which need to be consulted. In light of the above, we have informed you that we would not be in the position to handle your request within the time limits set out in Article 7 of the Regulation (EC) No 1049/2001 and therefore, in accordance with Article 6(3) of the Regulation, we have conferred with you to find a fair solution.

In this context, you were invited to specify the objective of your request, your specific interest in the requested documents, and to narrow down the scope of your request (i.e. the subject matters and/or timeframe covered), so as to reduce it to a more manageable amount of documents. In order to help you to narrow down your request we have provided the categories of documents with number of documents identified as falling within the scope of your request:

- Deliverables: 28
- Minutes: 2
- Presentations: 39
- Reports: 2

We specified that the length of these documents varies widely, from 1 to more than 150 pages and that a reasonable estimate would be that the requested documents would be more than 70 documents and represent at least 1756 pages.

We also stated that according to our preliminary estimates, and subject *inter alia* to others tasks that the REA staff concerned are likely to have to deal with during the same period, the third-party consultation and the length and/or complexity of the documents at stake, the handling of your request would take around 50 working days.

It followed that REA would be able to handle a maximum of 15 documents within the remaining days from the extended deadline of 30 working days counting from the date of registration of your application.

On 16 September 2020, you replied having made a selection and asked for the following documents:

- “D3.1 Legal and ethical state of the art
- D4.1 Report on user requirements and operational aspects
- D4.2 Use cases and scenarios
- D5.4 FOLDOUT System Architecture Design Report
- D6.3 Physical communication network hardware/software with documentation for ground-based solutions
- D10.1 Integration Plan and Test Descriptions
- D11.4 Exploitation Plan
- Minutes Kick Off Meeting 03.09.2018
- Minutes Kick Off Meeting 05.09.2018

- *FOLDOUT OBJ1 status and plan*
- *FOLDOUT OBJ2 status and plan*
- *FOLDOUT OBJ6 Improve situational awareness through fusion Status and plans*
- *FOLDOUT OBJ7 status and plan*
- *"FOLDOUT OB8 Demonstrate effectiveness of FOLDOUT concept in realistic operational scenarios"*
- *FOLDOUT OB9 status and plan*
- *FOLDOUT OB11 Ensure that the FOLDOUT developments are in line with EU Legal-Ethical-Privacy rules*
- *FOLDOUT_PartnerPresentation_Practicioners_KEMEA."*

We have replied on the same day and informed you that REA accepted your selection of 17 documents; we considered that a fair solution has been reached and informed you that REA would reply to your request by 12 October 2020¹.

This request is handled within the scope of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents².

B. DISCLOSURE OF THE REQUESTED DOCUMENTS

As a preliminary point, I would like to stress that security research aims at fostering a collaborative process to explore new ideas and technologies. The funded EU security research projects (the H2020 project FOLDOUT in this case) do not terminate with “development and deployment” of such ideas and technologies, as indicated in your confirmatory application.

The results of EU security research projects are only assessed based on their scientific and technological soundness and not linked to decisions related to the effective implementation years after the research work is completed. The objective of such research projects is to explore different ideas of how to address certain security challenges that Europe is facing and foster a collaborative process where different actors across the EU test their ideas.

Research does not deliver products to the market or enforce their uptake by public authorities. EU security research projects achieve a Technology Readiness Level (TRL) between 6 – 8 (see General Annexes for the definition³). To be noted that “development and deployment” are outside of the TRL scale.

After the completion of a research project, beneficiaries, who are the owner of the results, would still need to further invest their own resources for some years before “developing and deploying” tools to the market. Before deciding to further invest, those companies would need to consider the

¹ Ares(2020)4853323

² Regulation (EC) N° 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 L145, 31.05.2001, page 43, hereinafter “Regulation N° 1049/2001.

³ https://ec.europa.eu/research/participants/data/ref/h2020/wp/2014_2015/annexes/h2020-wp1415-annex-g-trl_en.pdf

scientific reliability of the research and also the political, societal, ethical and financial implications, together with the need to respect the international, EU and national legislation in force.

Having examined the documents requested under the provisions of Regulation (EC) N° 1049/2001 regarding public access to documents, we consider that the documents listed in Annex 1 to this letter are related to your request. In Annex 1 we mention the legal grounds under Regulation (EC) N° 1049/2001 applicable to each of the listed documents.

Concerning the exceptions to the right of access laid down in Articles 4(1) (a) first indent, 4(1) (b) and 4(2) first indent of Regulation (EC) No 1049/2001, namely the protection of the public interest as regards public security, the protection of privacy and the integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data and the protection of commercial interests of a natural or legal person including intellectual property we recall the following:

Protection of the public interest as regards public security

Article 4(1) (a), first indent, of Regulation 1049/2001 provides that “[t]he institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards public security”.

Expunged parts of deliverables D4.1 and D4.2 of the project FOLDOUT describe use case scenarios, namely the potential threats to the border safety and security, as identified by the competent Law Enforcement Agencies (LEAs) of Bulgaria, Greece, Finland, Lithuania and French Guiana, the objectives of such scenarios, the potential actions, actors and the equipment to respond to such threats, as well as the relevant geographical areas/ pilot test areas.

Disclosure of such information could provide intelligence and insights to the strategy of the authorities, to those persons, groups or entities that could impede the authorities’ efforts to counter illegal activities at the border, seriously undermining the public interest as regards public security.

The exception laid down in Article 4(1) (a) first indent of Regulation (EC) No. 1049/2001 does not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

Protection of privacy and integrity of the individual

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 integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data.

The applicable legislation in this field is Regulation (EU) No 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) 45/2001 and Decision No 1247/2002/EC⁴ (hereinafter “Regulation 2018/1725”).

All documents to which you requested access, contain personal data of individuals such as the name, surname, email, address, telephone number, fax number, signature or other personal data of staff of the consortium or of REA that are not in the public domain. Indeed, 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 data⁵.

In its Judgment in case C-28/08/P (Bavaria Lager)⁶, 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. Pursuant Article 9 (1) (b) of Regulation (EC) 2018/1725 ‘*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 processing in accordance with the requirements of Article 5 of Regulation 2018/1725, can the transmission of personal data occur.

According to Article 9(1) (b) of Regulation, REA 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. It is only in this case that REA has to examine whether there is a reason to assume that the data subject’s legitimate interest might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose.

We consider that, in your request, you do not put forward any arguments to establish the necessity to have the data transmitted. Therefore, REA does not have to examine whether there is a reason to assume that the data subject’s legitimate interest might be prejudiced. Nevertheless, please note that there are no reasons to assume that the legitimate interest of concerned individuals would not be prejudiced by disclosing their personal data. In the present case, disclosure of the personal data of persons involved in the project in question would harm their privacy.

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 documents requested. Therefore, the personal data have been redacted.

⁴ Official Journal L 205 of 21.11.2018, p. 39

⁵ Judgment of the Court of Justice of the European Union of 20 December 2017 in case C-434/16.

⁶ Judgment of 29 June 2010 in case C-28/08/P, European Commission v The Bavaria Lager Co. Ltd, EU:C2010:378, paragraph 63.

The exception laid down in Article 4(1) (b) of Regulation (EC) No 1049/2001, the protection of privacy and the integrity of the individual, is an absolute exception that does not have to be balanced against the public interest in disclosure.

Protection of commercial interests of natural and legal persons

The documents, listed in Annex 1 to this letter to which this exception apply, contain sensitive commercial information of the entities participating in the project not in the public domain in particular, the reference to the project consortium intellectual property (background, existing and/or foreseen foreground), knowhow, methodologies, technologies, potential inventions working modalities.

The public disclosure of this information would thus seriously undermine the consortium commercial interests. Accordingly, the exception in Article 4(2) first indent of Regulation (EC) No 1049/2001, has to be invoked and access to this part of the document has to be refused.

Such exception applies, unless there is an overriding public interest in disclosure of the requested documents. Such an interest must, first, be a public interest and secondly, outweigh the harm caused by disclosure. In your application, you did not bring forward any argument to justify the existence of an overriding public interest in releasing the requested documents. In this instance, we have found no elements that could indicate the existence of such an overriding public interest in the sense the Regulation (EC) No 1049/2001 that would outweigh the need to protect the commercial interests identified in this reply.

Therefore, the exception laid down in Article 4(2) first indent of Regulation (EC) No 1049/2001 applies to certain parts of the requested documents, which have been redacted.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Director of REA to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to Mr Marc TACHELET, Director of REA, at the following address:

Research Executive Agency
Covent Garden building
COV2 – 08/52
Place Charles Rogier, 16
1210 Brussels

Or by e-mail to marc.tachelet@ec.europa.eu

Yours sincerely,

Barbara KAMPIS

Enclosures:

- Annex 1 - List of documents related to the request and legal grounds regarding disclosure
- Deliverable D3.1 Legal and ethical state of the art
- Deliverable D4.2 Use cases and scenarios
- Deliverable D5.4 FOLDOUT System Architecture Design Report
- Deliverable D6.3 Physical communication network hardware/software with documentation for ground-based solutions
- Minutes Kick Off Meeting 03.09.2018
- Minutes Kick Off Meeting 05.09.2018
- FOLDOUT OBJ1 status and plan
- FOLDOUT OBJ2 status and plan
- FOLDOUT OBJ6 Improve situational awareness through fusion Status and plans
- FOLDOUT OBJ7 status and plan
- FOLDOUT OBJ8 Demonstrate effectiveness of FOLDOUT concept in realistic operational scenarios
- FOLDOUT OBJ9 status and plan
- FOLDOUT OBJ11 Ensure that the FOLDOUT developments are in line with EU Legal-Ethical-Privacy rules
- FOLDOUT_PartnerPresentation_Practicioners_KEMEA