

Dear Mr Vranken,

Subject: Your application for access to documents

We refer to your e-mail dated 30/10/2018 in which you make a request for access to documents.

We refer further to our request for clarification dated 05/11/2018.

We also refer to your response dated 05/11/2018 wherein you clarify that you would like to obtain “*any ethics reviews which might have taken place in relation to projects under the PADR (for example, Ocean2020) and the Pilot Project*” and refer to a Commission’s response on a parliamentary question of 25/04/2018 and the EDA Call for experts.

You request access to:

1. *The declarations of interests of all the independent experts and observers in connection with the Pilot Project on Defence Research (PP) and the Preparatory Action on Defence Research (PADR);*
2. *The ethics reviews connected with the Pilot Project and the Preparatory Action on Defence Research.*

On the basis of the description provided in your emails, we were able to identify 30 documents relating to point 1 above.

Having examined the document(s) requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents¹, applicable to the European Defence Agency (hereinafter “EDA”) in accordance with Article 30 of the Council Decision defining the statute, seat and operational rules of the EDA², we have concluded that they might be disclosed only partially. This is due to the fact that access to some parts of the documents is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

With regard to the declarations of non-conflict of interest

Please be informed that the declaration of non-conflict of interests contain the handwritten signatures of the experts. As signatures are sensitive biometric data, they need to be redacted.

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

¹ [Regulation 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 L145/43 of 31.05.2001

² [Council Decision \(CFSP\) 2015/1835](#) of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency

integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data. The applicable legislation in this field is 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 data³.

When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable⁴.

According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced.

We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned.

Furthermore, if the handwritten signatures are to be left, this would allow for eventual forging.

In addition, the date of signature of each declaration could not be made public. As you may know the PP and PADR are initiatives with a limited time span. Therefore, the disclosure of the date on which the declarations were signed might allow the identification of the experts participating in the evaluation of a given call.

Also, in accordance with article 4(1)(a) fourth indent, *“the institutions shall refuse access to a document where disclosure would undermine the protection of the financial, monetary or economic policy of the Community or a Member State”*.

As you might know already, the names of the EDA experts are already in the public domain⁵. Their names, however, are not published per call. This is due to the fact that in some areas only a limited number of experts is available and therefore, if members of the public know with exactness in which call(s) experts are involved, they might become a subject to influence and pressure from the outside world. This in turn would undermine their independence which will have a negative impact on the financial interests of the Union. For these reasons, safeguarding the independence of the experts is of utmost importance. Hence, in order to protect the interests under Article 4(1)(a) fourth indent, the call references have to be redacted.

Therefore, we have concluded that only partial access could be granted to the documents in question.

³ [Regulation 45/2001](#) of the European Parliament and of the Council of 18 December 2001 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; Official Journal L8/1 of 12.1.2001

⁴ Judgment of the Court of Justice of the EU of 29 June 2010 in case 28/08 P, [Commission/The Bavarian Lager Co. Ltd](#), ECR 2010 I-06055.

⁵ <https://www.eda.europa.eu/docs/default-source/procurement-library/pp-padr-experts-list.pdf>

Nevertheless, we have also noticed that by expunging the date, the experts' signatures and the call reference, the only remaining part of the document, with the exception of the experts' names, is the standard text of the declaration, the so-called template. The names of the experts as previously mentioned are already in the public domain.

In accordance with a settled case-law, the EU institutions, agencies and bodies are entitled to refuse partial disclosure of the documents access to which is sought whenever such disclosure would be meaningless.⁶

On the basis of the above, we have decided to grant you access to the template as after the redaction of the documents the only information remained would be the standard text and the name of the respective expert.

Please be informed that the interests under Article 4(1) are absolute in nature and therefore not balanced by an overriding public interest in disclosure.

With regard to the ethics reviews connected to the PP and PADR

We regret to inform you that EDA does not hold any documents that would correspond to the description given in your application.

I. PADR

Please note that in accordance with Article 34.1(a) of the Grant Agreement (hereinafter "GA"), *"the beneficiaries must carry out the action in compliance with ethical principles (including the highest standards of research integrity)."*

Pursuant to Article 22(1)(2) of the GA, *"the Agency or the Commission – during the implementation of the action or afterwards – carry out reviews on the proper implementation of the action (including assessment of deliverables and reports) [...]. The Agency or the Commission may carry out reviews directly (using its own staff) or indirectly (using external persons or bodies appointed to do so. "*

The reviews envisaged under Article 22 of the GA include reviews on the proper implementation of the action, which includes compliance with the ethical principles.

Such reviews however have not taken place yet as the projects are still ongoing.

II. PP

Please be informed that the PP GA does not contain an explicit provision on ethical review. Under Article 28 of the GA, however, financial and technical checks and

⁶ Judgement of the Court of First Instance of 12 July 2001 T-204/99, [Mattila v Council and Commission](#), para 69

Judgment of the General Court of 20 March 2014 in case T-181/10, [Reagens v Commission](#), para 172

audits can be performed on the proper implementation of the project and compliance with the obligations under the GA.

Please note that such ethical reviews on the projects did not take place.

As specified in Article 2(3) of Regulation 1049/2001, the right of access applies only to existing documents in the possession of EDA.

Given that no such documents, corresponding to the description given in your application, are held by EDA, the latter is not able to fulfil your request.

Means of redress

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

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Chief Executive of EDA to the following email: info@eda.europa.eu.

Yours faithfully,

EDA