



EUROPEAN COMMISSION  
RESEARCH EXECUTIVE AGENCY

Legal Affairs, Internal Control and Reporting  
**Head of Sector**

Brussels,  
REA C0.1

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*Sent by registered email to:*  
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4b917f85@asktheeu.org](mailto:ask+request-8789-4b917f85@asktheeu.org)

**Subject: Your application for access to documents on the grant agreement n° 674964  
(project CEREALPATH) (ref. Ares(2020)7042974)**

Dear Mr Izrael,

We refer to your request for access to documents submitted to the Research Executive Agency (REA) on 18 November 2020 via the website AskTheEU.org and registered on 24 November 2020 under reference number Ares(2020)7042974.

**A. SCOPE OF YOUR REQUEST**

In your application, you requested:

*" 1) Grant agreement ID: 674964 CerealPath final report M48.*

*2) Grant agreement ID: 674964 CerealPath University BOKU, Vienna deliverables."*

This request is handled within the scope of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>1</sup>.

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<sup>1</sup> 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.

## B. DISCLOSURE OF THE REQUESTED DOCUMENTS

Having examined the documents requested under the provisions of Regulation (EC) N° 1049/2001 regarding public access to documents, we consider that the documents which are listed in Annex 1 are related to your request. In this Annex 1 we specify the documents to be disclosed and/or partially disclosed according to the exceptions provided in the above mentioned Regulation. The legal grounds for calling on these exceptions are detailed for each of the documents listed in the Annex 1 to this letter.

Please note that the documents disclosed were received by REA from the coordinator of the project. They 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. REA does not assume any responsibility from their reuse.

Concerning the exceptions to the right of access laid down in Articles 4(1) (b) and 4(2) first indent of Regulation (EC) No 1049/2001, namely 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 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/EC<sup>2</sup> (hereinafter “Regulation 2018/1725”).

The documents to which you requested access (nr.1 and 2 in Annex 1), contain personal data of individuals such as the name, surname 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 data<sup>3</sup>.

In its Judgment in case C-28/08/P (Bavaria Lager)<sup>4</sup>, 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*

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<sup>2</sup> Official Journal L 205 of 21.11.2018, p. 39

<sup>3</sup> Judgment of the Court of Justice of the European Union of 20 December 2017 in case C-434/16.

<sup>4</sup> Judgment of 29 June 2010 in case C-28/08/P, European Commission v The Bavaria Lager Co. Ltd, EU:C2010:378, paragraph 63

*'[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 in the documents.

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 (nr.1 and 2 in Annex 1) contain sensitive commercial information of the entities that participated in the project which is not in the public domain. The mentioned documents contain, in particular, the reference to the project consortium intellectual property (existing and/or foreseen foreground), knowhow, methodologies, technologies, potential inventions working modalities, budget, financial statements of the beneficiaries part of the consortium, financial and administrative data. The public disclosure of such information would thus seriously undermine the applicants' commercial interests. Accordingly, the exception in Article 4(2) first indent of Regulation (EC) No 1049/2001, has to be invoked and access to the parts of the requested documents containing this information 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 some 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](mailto:marc.tachelet@ec.europa.eu)

Yours sincerely,

(Q-signed)  
Barbara KAMPIS

Enclosures:

- Annex 1 - List of documents related to the request and legal grounds regarding disclosure
- Periodic Technical Report - Ares(2020)2287371
- Deliverable 8.6 - Ares(2018)5884765