



EUROPEAN COMMISSION
RESEARCH EXECUTIVE AGENCY

Director

Brussels,
REA

Mr Gergely Izrael
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*Sent by registered email to:
ask+request-8906-236c8a70@asktheeu.org*

Subject: Your confirmatory application pursuant to Article 7(2) of Regulation (EC) No 1049/2001 – application for access to documents (ref. Ares(2021)106605)

Dear Mr Izrael,

I refer to your email of 5 January 2021 registered by the Research Executive Agency (REA) on 6 January 2021 under reference number Ares (2021)106605.

We have processed your request as a confirmatory application under Article 8 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents ('Regulation 1049/2001')¹.

1. SCOPE OF YOUR REQUEST

On 18 November 2020, you submitted via the website AskTheEU.org your initial application for access to documents concerning the project CerealPath, which was registered by REA on 24 November 2020 under reference number Ares(2020)7042974.

In your application regarding the CerealPath project (674964) you requested:

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

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

On 15 December 2020, REA replied to your initial request².

¹ OJ L 145, 31.5.2001, p.43.

In its letter, REA provided an inventory of the documents related to the request (Annex 1 of the reply), specifying for each document non-disclosed or partially disclosed the legal grounds on which REA based its decision. In particular, REA:

- provided you the links to the Publishable Summary of the Final Report and the deliverable 11.1 “Report on Annual Symposia” that are publicly accessible.
- fully disclosed the deliverable 8.6 “Development and use of a genomic prediction model to predict disease resistance in bread and durum wheat breeding populations”.
- partially disclosed the Periodic Technical Report, based on the exceptions relating to the protection of the privacy and the integrity of the individual and commercial interests of a natural or legal person, including intellectual property, laid down respectively in Articles 4(1)(b) and 4(2), first indent, of Regulation 1049/2001;
- refused access to the other requested documents (i.e. Periodic Financial Report and Final Summary financial statement) based on the exceptions relating to the protection of the privacy and the integrity of the individual and commercial interests of a natural or legal person, including intellectual property, laid down respectively in Articles 4(1)(b) and 4(2), first indent, of Regulation 1049/2001.

On 6 January 2021, REA registered your email dated 5 January 2021 where you requested the disclosure of documents “Periodic Financial Report and Final Summary financial statement” for the project CerealPath (grant agreement n°674964), documents that were listed in REA's reply to your initial application.

On the same date, you were informed that your request would be processed as a confirmatory application under Article 8 in accordance with Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

In your confirmatory application, while you do not challenge the non-disclosure due to the protection of the privacy and integrity of the individual, you challenge the non-disclosure of documents under Article 4(2), first indent of Regulation 1049/2001 by invoking arguments to support the existence of a public interest overriding the protection of commercial interests of a natural and legal person.

2. ASSESSMENT OF YOUR CONFIRMATORY APPLICATION

When assessing a confirmatory application for access to documents, REA conducts a fresh review of the reply given at the initial stage in the light of the provisions of Regulation 1049/2001.

Following this review, I regret to inform you that I have to confirm the initial decision of REA to refuse access to the requested documents (i.e. Periodic Financial Report and Final Summary financial statement) based on the exception Article 4(2), first indent (protection of commercial interests of a natural or legal person, including intellectual property) for the reasons set out below.

² Ares(2020)7622026

2.1. Protection of commercial interests, including intellectual property

In accordance with Article 4(2), first indent, of Regulation 1049/2001, an institution shall refuse access to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property, [...], unless there is an overriding public interest in disclosure.

The documents, to which you request access (i.e. Periodic Financial Report and Final Summary financial statement), contain references to the project consortium budget, financial statements of the beneficiaries' members of the consortium, declaration of costs and financial and administrative data. This information has to be considered as commercially sensitive information of the CerealPath consortium. It reflects financial and administrative data, which belong to the consortium.

As regard the release of commercially sensitive information into the public domain, it might give competitors of the beneficiaries an unfair advantage, as the former would be able to use this sensitive commercial information in their favour. Namely, they could anticipate the grant beneficiaries' strategies and weaknesses, including when competing in calls for tenders and proposals.

As stated in the reply to the initial application, the public disclosure of such information would undermine the commercial interests of the CerealPath consortium, within the meaning of Article 4(2), first indent, of Regulation 1049/2001, as the information is not publicly available.

In light of the above, I consider that there is a real and non-hypothetical risk that public access to the documents to which access has been refused would undermine the commercial interests of the consortium. I conclude, therefore, that such access has to be refused on the basis of the exception laid down in Article 4(2), first indent (protection of commercial interests), of Regulation 1049/2001.

3. OVERRIDING PUBLIC INTEREST

In your confirmatory application, you present arguments in support of your view that there is an overriding public interest in disclosure of the requested documents.

First, you invoke arguments concerning the lack of transparency on EU funding to justify the existence of an overriding public interest in disclosure. You stated that *“Google search the term “eu agricultural mafia” and you will get many interesting articles about how non-transparency is destroying the EU's agriculture. ... Not only the EU's agricultural food production stability is at stakes but the EU's integrity itself. According to the nature of the agricultural systems, the future generation's food security needs to be strategically built in the present. A stable EU is a public interest but lack of transparency in the EU funding favours the EU destabilising activities”*

You added that *“...In the EU, bodies protected by commercial interests are not even afraid to commit public murder anymore. Hence in cases where irregularities have been identified, for example in this case irregularities regarding grant agreements, working contracts and missing deliverables any document request refusals based on protection of commercial interests should be overridden by public interests ...”*.

The exception laid down in Article 4(2), first indent, of Regulation 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure.

Regarding the notion of public interest, I would like to recall that the recital (11) of the Regulation 1049/2001 provides that, "*in principle, all documents of the institutions should be accessible to the public. However, certain public and private interests should be protected by way of exceptions.*"

In this respect, please note that the public interest in transparency and disseminating project results is guaranteed by the set-up of a coherent set of strategies and tools such as the publication on Cordis of important information relating to the funded projects (e.g. the name of the project partners, project abstracts, indicative EU funding per participant, project duration, etc.) and the dissemination of results of finalised projects, which is usually made through publishable summaries of project outcomes, prepared by the consortium and approved by the Commission/REA, while preserving the intellectual property of the consortium.

Concerning your statement that "*in cases where irregularities have been identified...any document request refusals based on protection of commercial interests should be overridden by public interests, for example in this case irregularities regarding grant agreements*", please note that the grant agreement's provisions provide for the necessary measures for REA or the Commission to take if irregularities occur.

Considering the above-mentioned arguments establishing the foreseeable risk to harm the commercial interests that would result from the further disclosure of the documents, REA estimates that, in this case, the invoked public interest described in your confirmatory application does not outweigh the need to protect the interests of the third parties concerned. Therefore, the exception laid down in Article 4(2), first indent, of Regulation 1049/2001 should apply to the documents to which access is refused, and you have not presented sufficient elements demonstrating the existence of an overriding public interest in disclosure of the requested documents.

4. CONCLUSION

Having re-examined your request, I have come to the conclusion that no further access is possible without undermining the interests described above because the requested documents for which disclosure is refused are covered in their entirety by the invoked exceptions to the right of public access.

REA considers that, in absence of overriding public interests, it has the duty not to grant access to the requested documents, according to Article 4(2), first indent, of Regulation 1049/2001 as the prevailing interests is, in this case, the protection of the commercial interests, including intellectual property, of the third parties concerned.

5. MEANS OF REDRESS

I draw your attention to the means of redress available against this decision of the Agency. You may, under the conditions of Article 263 TFEU, bring proceedings before the General Court of the European Union or, under the conditions of Article 228 TFEU, file a complaint with the European Ombudsman.

Yours sincerely,

(signed with Qualified Electronic Signature)

Marc TACHELET