



EUROPEAN RESEARCH EXECUTIVE AGENCY (REA)

REA.D - Coordination and Corporate Services
D.1 - Planning, Knowledge and Compliance

Brussels
REA.D.1.003

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1000 Bruxelles
Belgium

Sent by registered email to:
ask+request-11627-1f0909e8@asktheeu.org

Subject: Your application for access to documents – Ref. Ares(2022)5311497

Dear Mr Baldan,

We refer to your request for access to documents submitted to the European Research Executive Agency (REA) in French on 20 July 2022 and registered on 22 July 2022 with reference Ares(2022)5311497.

On 26 July, REA requested to receive clarifications on your request as well as your confirmation to handle your request in English, suspending the time limit to reply until such clarifications were received¹. By email of 26 July 2022², you kindly accepted the handling of your request for access to documents to be replied to in English, but you did not provide send the requested clarifications. Upon REA's reminder³, on 3 August 2022, you further confirmed the translation in English⁴; however, you did not transmit the requested clarifications on points (3) and (4) under the scope of your request as mentioned below. Further to the acknowledgement of your request and the following exchanges, we informed you on 24 August 2022⁵ that an extension of the time limit with 15 working days was necessary for us to handle your request, in accordance with Article 7(3) of Regulation (EC) No 1049/2001 regarding public access to documents.

A. SCOPE OF YOUR REQUEST

Following the above exchanges of e-mails, in your application concerning the Horizon Europe projects 101061700 HORIZON-CL2-2021-TRANSFORMATIONS-01, 101060899, HORIZON-CL2-2021-DEMOCRACY-01, and 101072410 HORIZON-MSCA-2021-DN-01, you request access to:

¹ Ares(2022)5388487
² Ares(2022)6163366
³ Ares(2022)5545904
⁴ Ares(2022)6163443
⁵ Ares(2022)5911208

“(1) the proposals of the mentioned projects as submitted by the applicants; meaning all the documents sent by the applicants to the Institutions or the administration as part of the proposal for the call for projects;

(2) the call conditions and documents made available by the European Research Executive Agency (REA) to the applicants;

(3) the copy of exchanges between the applicant and the European Research Executive Agency (REA); (to be more accurate, exchanges related to these Horizon projects);

(4) the documents relating to the evaluation and the (budget) awarding decision (including the conformity check, authenticity and validity of the declarations of the candidates in the transparency register). ”

This request is handled within the scope of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereinafter “*Regulation 1049/2001*”)⁶.

B. DISCLOSURE OF THE REQUESTED DOCUMENTS

Having examined the documents requested under the provisions of Regulation 1049/2001 regarding public access to documents, in particular as specified in Article 2(3) therein for which the right of access applies only to existing documents in the possession of the institution, we consider that the documents which are listed in Annex 1 attached to this letter are related to your request.

In Annex 1, we specify the documents to be disclosed or not disclosed according to the exceptions provided in the above-mentioned Regulation. The legal grounds for calling on these exceptions are mentioned for each of the documents listed in Annex 1 to this letter.

Concerning the exceptions to the right of access laid down in Articles 4(1) (b) and Article 4(3), second subparagraph 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 the decision-making process, we recall the following:

Protection of privacy and integrity of the individual

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 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 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices

⁶ 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

and agencies and on the free movement of such data⁷ (hereinafter “*Regulation 2018/1725*”).

The identified documents (nr. 1, 6, 7 to 15, 18, 20 to 30, 35, 37 and 42 to 104 in Annex I) contain personal data of individuals, such as names, surnames, or other personal data of staff of the consortium or researchers involved in the proposals, as well as REA staff handling these calls, 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 data⁸.

In its Judgment in case C-28/08/P (Bavarian Lager)⁹, 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 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 2018/1725, 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 personal 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

⁷ 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 (Text with EEA relevance.), PE/31/2018/REV/1, OJ L 295, 21.11.2018, p. 39–98

⁸ Judgment of the Court of Justice of the European Union of 20 December 2017 in case C-434/16, *Peter Nowak v Data Protection Commissioner*

⁹ Judgment of 29 June 2010 in case C-28/08/P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C2010:378, paragraph 63.

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, we conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data contained in the document requested.

The exception laid down in Article 4(1)(b) of Regulation 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 identified documents (nr. 1, 7 to 15, 20 to 29, 35, 42 to 104 in Annex I) under this exception contain sensitive commercial information of the entities participating in the project that are not in the public domain. These documents contain, in particular, the reference to the project consortium intellectual property (background, existing and/or foreseen foreground), knowhow, methodologies, working modalities, name of grant applicants, weakness and strengths as well as financial data of the applicants that submitted the proposals, etc.

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 the concerned documents 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 document. In this instance, we have found no elements that could indicate the existence of such an overriding public interest in the sense the Regulation 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 1049/2001 applies to the above-mentioned documents that are not disclosed to you.

Protection of the decision-making process

Article 4(3), second subparagraph, of Regulation 1049/2001 provides that: *‘access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution decision-making process, unless there is an overriding public interest in disclosure.’*

Disclosure of the documents 7 to 13, 20 to 29, and 42 to 104 in Annex 1 would undermine the protection of the decision-making process of the Commission and REA, as the request concerns documents containing opinions for internal use as part of deliberations and preliminary consultations between the consortium and the institution concerned, even after the decision has been taken.

The exception laid down in Article 4(3), first subparagraph, of Regulation 1049/2001 applies unless there is an overriding public interest in disclosure of the documents. In this instance, we have found no elements in your request, which could indicate the existence of an overriding public interest in the sense of Regulation 1049/2001 that would outweigh the need to protect the decision-making process in this case.

Therefore, we consider that access to the requested documents should be refused to you pursuant to Article 4(3), first subparagraph, of Regulation 1049/2001.

Furthermore, in absence of any clarification from your side on point 4) of your request, concerning documents pertaining to *the evaluation and the (budget) awarding decision (including the conformity check, authenticity and validity of the declarations of the candidates in the transparency register)*, REA has identified documents nr. 14 and 15, 31 and 32, 40 and 41, 105 and 106 listed in Annex I as falling in the scope of your request. In this respect, REA has also identified a Declaration of Honour (nr. 106, which is a template document): this declaration ensures that all beneficiaries comply with the rules and are not in a situation that would exclude them from receiving EU funding (e.g. bankruptcy). It is filled in by each beneficiary and is signed by its legal representative directly in the IT system.

Concerning the transparency register, this is a public register handled by the European Commission, which you may directly access and consult the documents available therein which are not in possession of REA. The relevant link is indicated in Annex I (nr. 105 in Annex I).

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:

European Research Executive Agency (REA)
Covent Garden building
COV2 – 8/52
Place Charles Rogier, 16
1210 Brussels

Or by email to: Marc.Tachelet@ec.europa.eu

Yours sincerely,

Barbara KAMPIS
Head of Unit