



EUROPEAN COMMISSION
RESEARCH EXECUTIVE AGENCY

Legal Affairs, Internal Control and Reporting
Head of Sector

Brussels,
REA C0.1

Mr Eleftherios Chelioudakis
Ahniadon 17-19
11854, Athens
Greece

Sent by registered email to:
[ask+request-7488-
b9dadce1@asktheeu.org](mailto:ask+request-7488-b9dadce1@asktheeu.org)

Subject: Your application for access to documents on project iBorderCtrl (700626), TRESSPASS (787120), FOLDOUT (787021) and ROBORDER (740593) - Ares(2019)7461893

Dear Mr Chelioudakis,

We refer to your request for access to documents submitted to the Research Executive Agency (REA) via the AsktheEU.org on 03/12/2019 and registered on 04/12/2019 under reference number Ares(2019)7461893. Further to this, we informed you on 06/01/2020 that an extension of the time limit within 15 working days was necessary in accordance with Article 7(3) of Regulation (EC) No 1049/2001 regarding public access to documents.

A. SCOPE OF YOUR REQUEST

In your application concerning the projects iBorderCtrl (grant agreement no. 700626), TRESSPASS (grant agreement no. 787120), FOLDOUT (grant agreement no. 787021) and ROBORDER (grant agreement no. 740593) you request the following information:

- " 1. The pilot implementation of the project iBorderCtrl ("Intelligent Portable Control System") in Greece and any related publications:*
[https://urldefense.com/v3/https://www.iborderctrl.eu/Greek-Pilot_!NW73rmyV52c!S6WyAy5ybvyHrbus5I7BwFQgHAATpmELWRSQUVBYh9SyFH96q6iLHuwZURLpGajSis9bl9fqUz\\$](https://urldefense.com/v3/https://www.iborderctrl.eu/Greek-Pilot_!NW73rmyV52c!S6WyAy5ybvyHrbus5I7BwFQgHAATpmELWRSQUVBYh9SyFH96q6iLHuwZURLpGajSis9bl9fqUz$)),
- 2. The pilot implementation of the project TRESSPASS ("robust Risk based Screening and alert System for PASSengers and luggage") in Greece and any related publications:*
[https://urldefense.com/v3/https://www.tresspass.eu/Pilot-3_!NW73rmyV52c!S6WyAy5ybvyHrbus5I7BwFQgHAATpmELWRSQUVBYh9SyFH96q6iLHuwZURLpGajSis9UERhuuQ\\$](https://urldefense.com/v3/https://www.tresspass.eu/Pilot-3_!NW73rmyV52c!S6WyAy5ybvyHrbus5I7BwFQgHAATpmELWRSQUVBYh9SyFH96q6iLHuwZURLpGajSis9UERhuuQ$)),

3. The trials of the project FOLDOUT (“Through-foliage detection, including in the outermost regions of the EU”) in Greece and any related publications:

(https://urldefense.com/v3/https://foldout.eu/wp-content/uploads/2019/11/FOLDOUT_De11_3-FINAL.pdf ;!NW73rmyV52c!S6WyAy5ybvyHrbus5I7BwFQgHAATpmELWRSQUVBYh9SyFH96q6iLHuwZURiQLpgajSis9Txc8Nz\$)

4. Any publication related to the project ROBORDER (“autonomous swarm of heterogeneous Robots for BORDER surveillance”): ([https://urldefense.com/v3/https://roborder.eu/the-project/demonstrators/;!NW73rmyV52c!S6WyAy5ybvyHrbus5I7BwFQgHAATpmELWRSQUVBYh9SyFH96q6iLHuwZURiQLpgajSis9U0hP4qB\\$](https://urldefense.com/v3/https://roborder.eu/the-project/demonstrators/;!NW73rmyV52c!S6WyAy5ybvyHrbus5I7BwFQgHAATpmELWRSQUVBYh9SyFH96q6iLHuwZURiQLpgajSis9U0hP4qB$)).”

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

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. Concerning the ROBORDER project, please note that REA is not in the possession of any publications as such.

In Annex 1 we specify the documents to be disclosed, partially disclosed or to which public access cannot be granted 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.

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 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

The document D2.2 is a deliverable in the TRESSPASS project that identifies the risk indicators in the context of border crossing point based on three threat scenarios. It also details the various relevant information sources to each scenario. It is important to highlight that a substantial part of the information provided in this deliverable is the result of surveys and interviews with border guards, who by definition hold sensitive information in the exercise of their duties. Such information, if disclosed, would undermine the protection of the public security; therefore, the document is covered by the exception laid down in Article 4(1) (a) first indent of the Regulation (EC) No 1049/2001.

Moreover, this document is classified as EU RESTRICTED according to the Commission Decision (EU, Euratom) 2015/444 of 13 March 2015 on the security rules for protecting EU classified information and the Guidelines for the classification of information in research projects (https://ec.europa.eu/research/participants/data/ref/h2020/other/hi/secur/h2020-hi-guide-classif_en.pdf). Pursuant to the Commission Decision, documents, which are classified as EU

RESTRICTED, contain 'information and material the unauthorised disclosure of which could be disadvantageous to the interest of the European Union or of one or more of the Member States'.

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/EC¹ (hereinafter "Regulation 2018/1725").

The documents to which you requested access, contain personal data of individuals, such as the name, surname, email or other personal data of staff members of the consortium of the abovementioned projects and/or of other individuals related to the project. 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 data².

In its Judgment in Case C-28/08/P (Bavaria Lager)³, 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 to 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.

¹ Official Journal L 205 of 21.11.2018, p. 39

² 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*, request for a preliminary ruling, paragraphs 33-35, [ECLI:EU:C:2017:994](#).

³ Judgment of 29 June 2010 in case C-28/08/P, *European Commission v The Bavaria Lager Co. Ltd*, EU:C2010:378, paragraph 59.

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 for a specific purpose in the public interest. 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 document requested.

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 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 (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 the above-mentioned document that is not disclosed to you.

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
- D6.4 Evaluation report of final prototype pilot deployment and Best Practices - Analysis of pilot feedback on final prototype – iBorderCtrl project

