



EUROPEAN COMMISSION
RESEARCH EXECUTIVE AGENCY

Director

Brussels,
REA/MT/

Mr Eleftherios Chelioudakis
Ahniadon 17-19
11854, Athens
Greece

*sent by registered mail with
acknowledgment of receipt and by
registered e-mail to:*
ask+request-7488 b9dadce1@asktheeu.org

e.chelioudakis@homodigitalis.gr

Subject: Your confirmatory application pursuant to Article 7(2) of Regulation (EC) No 1049/2001 – application for access to documents (ref. Ares(2020) 880939)

Dear Mr Chelioudakis,

I refer to your email of 9 February 2020 registered by the Research Executive Agency (REA) on 11 February 2020 under reference number Ares(2020)880939. You request a review of the position taken by REA with regard to the initial request for access to documents, pursuant to 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 3 December 2019, REA received your initial application for access to documents concerning four projects, which was registered on 4 December 2019 under reference number Ares(2019)7461893.

In your application, you requested:

*"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!S6WyAy5ybvyHrbus5I7BwFQgHAATpmELWRSQUVBYh9SyFH96q6iLHuwZURlQLpgajSis9bI9fqUz\\$](https://urldefense.com/v3/_https://www.iborderctrl.eu/Greek-Pilot_!NW73rmyV52c!S6WyAy5ybvyHrbus5I7BwFQgHAATpmELWRSQUVBYh9SyFH96q6iLHuwZURlQLpgajSis9bI9fqUz$)),*

¹ OJ L 145, 31.5.2001, p.43.

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!S6WyAy5ybvyHrbus5I7BwFQgHAATpmELWRSQUVBYh9SyFH96q6iLHuwZURlQLpgajSis9UERhuuQ\\$](https://urldefense.com/v3/https://www.tresspass.eu/Pilot-3;!NW73rmyV52c!S6WyAy5ybvyHrbus5I7BwFQgHAATpmELWRSQUVBYh9SyFH96q6iLHuwZURlQLpgajSis9UERhuuQ$)),

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!S6WyAy5ybvyHrbus5I7BwFQgHAATpmELWRSQUVBYh9SyFH96q6iLHuwZURlQLpgajSis9Txcc8Nz\\$](https://urldefense.com/v3/https://foldout.eu/wp-content/uploads/2019/11/FOLDOUT_De11_3-FINAL.pdf;!NW73rmyV52c!S6WyAy5ybvyHrbus5I7BwFQgHAATpmELWRSQUVBYh9SyFH96q6iLHuwZURlQLpgajSis9Txcc8Nz$))

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!S6WyAy5ybvyHrbus5I7BwFQgHAATpmELWRSQUVBYh9SyFH96q6iLHuwZURlQLpgajSis9U0hP4qB\\$](https://urldefense.com/v3/https://roborder.eu/the-project/demonstrators/;!NW73rmyV52c!S6WyAy5ybvyHrbus5I7BwFQgHAATpmELWRSQUVBYh9SyFH96q6iLHuwZURlQLpgajSis9U0hP4qB$)).

On 6 January 2020, REA informed you of the extension of the initial deadline of 15 working days by additional 15 working days, in accordance with Article 7(3) of the Regulation².

On 27 January 2020, REA replied to your initial request on the H2020 projects FOLDOUT (GA nr.787021), iBorderCtrl (GA nr.700626), TRESSPASS (GA nr.787120), and ROBORDER (GA nr.740593)³.

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:

- For the project iBorderCtrl, REA has partially disclosed deliverable D6.4, 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;
- For the project TRESSPASS, REA has fully disclosed deliverables D1.3, D1.4 and D6.1;
- The access to the other requested documents of the projects iBorderCtrl, TRESSPASS and FOLDOUT was refused based on the exceptions relating to the protection of public interest of public security, 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)a, first indent, 4(1)(b) and 4(2), first indent, of Regulation 1049/2001;

² Reference Ares(2020)29107.

³ Reference Ares(2020)499764.

- For the project ROBORDER, REA could not identify any documents because not in possession of any publications, as requested in your initial request.

On 11 February 2020, REA registered your confirmatory application, pursuant to Article 7(2) of Regulation 1049/2001.

On 3 March 2020, REA informed you of the extension of the initial deadline of 15 working days by additional 15 working days, in accordance with Article 8(2) of Regulation 1049/2001⁴.

Through your confirmatory application, while you consider acceptable the redaction of personal data, you challenge the non-disclosure of documents to protect the commercial interests of a natural or legal person under Article 4(2), first indent, of Regulation 1049/2001, especially *“reports on use cases and scenarios, risk indicators, evaluation reports and analysis of the pilots”* which in your view *“do not (or not mostly) contain commercial interests protected by Copyright”*.

You invoke, for all the projects related to your request, the existence of an overriding public interest in disclosure for publicly funded projects. Moreover, you state that *“projects such as iBorderCtrl, TRESSPASS, and FOLDOUT are related to intrusive technologies that could lead to unlawful interferences with the rights to privacy and data protection.”* and that *“the research from projects such as ROBORDER ... could easily been used in a later stage for military purposes, especially if you consider the fact that stakeholders from the defense field, such as the Hellenic Ministry of Defense, are involved in this project.”* Therefore, you consider that *“access to the requested documents is needed so that the public will be informed about the context and the results of the pilots of such research projects”* and that *“Only in this way, we could form a democratic debate on the proposed technology-led systems and their alleged added value in safeguarding the security of our communities”*.

Finally, you request access to the following documents:

- For the project FOLDOUT: deliverable D4.2 “Use case and scenarios”;
- For the project iBorderCtrl: deliverable D6.4 “Evaluation report of final prototype pilot deployment and Best Practices - Analysis of pilot feedback on final prototype” and Annex 1 Description of Action;
- For the project TRESSPASS: Annex 1 Description of Action, deliverables D2.2 “Risks indicators” and D6.2 “Evolving CONOPS framework”;
- For the project ROBORDER: deliverable D1.1 “Draft of concept of operation, use cases and requirements”.

2. ASSESSMENT OF YOUR CONFIRMATORY APPLICATION

As a preliminary point, I would like to stress that security research aims at fostering a collaborative process to explore new ideas and technologies. The funded EU security research projects do not terminate with “development and deployment” of such ideas and technologies, as indicated in your confirmatory application.

⁴ Reference Ares(2020)1330867.

The results of EU security research projects are only assessed based on their scientific and technological soundness and not linked to decisions related to the effective implementation years after the research work is completed. The objective of such research projects is to explore different ideas of how to address certain security challenges that Europe is facing and foster a collaborative process where different actors across the EU test their ideas.

Research does not deliver products to the market or enforce their uptake by public authorities. EU security research projects achieve a Technology Readiness Level (TRL) between 6 – 8 (see General Annexes for the definition⁵). To be noted that “development and deployment” are outside of the TRL scale.

After the completion of a research project, beneficiaries, who are the owner of the results, would still need to further invest their own resources for some years before “developing and deploying” tools to the market. Before deciding to further invest, those companies would need to consider the scientific reliability of the research and also the political, societal, ethical and financial implications, together with the need to respect the international, EU and national legislation in force.

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 am pleased to inform you that a partial access is granted to deliverables D4.2 “Use case and scenarios” of the project FOLDOUT and D6.2 “Evolving CONOPS framework” of the project TRESSPASS, subject to redactions based on Articles 4(1)(a), first indent (protection of the public interest as regards public security), 4(1)(b) (protection of the privacy and the integrity of the individual) and 4(2), first indent (protection of commercial interests of a natural or legal person) of Regulation 1049/2001.

For the remaining documents (i.e. deliverable D6.4 and Annex 1 of the project iBorderCtrl, Annex 1 and deliverable D2.2 of the project TRESSPASS) I confirm the position already taken at the initial stage by REA. In particular:

- Deliverable D6.4 of the project iBorderCtrl is partially disclosed based on the exceptions in Articles 4(1)(b) (protection of the privacy and the integrity of the individual) and 4(2), first indent (protection of commercial interests of a natural or legal person, including intellectual property) of Regulation 1049/2001.
- Access to Annex 1 of the project iBorderCtrl and Annex 1 of the project TRESSPASS is refused based on the exceptions in Articles 4(1)(b) (protection of the privacy and the integrity of the individual) and 4(2), first indent (protection of commercial interests of a natural or legal person, including intellectual property) of Regulation 1049/2001. For deliverable D2.2 of the project TRESSPASS access is refused based only on the exception laid down in Article 4(1)(a), first indent (protection of the public interest as regards public security).

Regarding the project ROBORDER, as mentioned above, deliverable D1.1 “Draft of concept of operation, use cases and requirements” was not included in the list of documents at the

⁵ https://ec.europa.eu/research/participants/data/ref/h2020/wp/2014_2015/annexes/h2020-wp1415-annex-g-trl_en.pdf

initial stage because it is not a publication, therefore out of the scope of your initial request. However, following your specific request in the context of this review, REA has assessed the possibility of disclosure for this deliverable as well. I regret to inform you that access to deliverable D1.1 of the project ROBORDER is refused based on the exception in Article 4(1)(a), first indent (protection of the public interest as regards public security).

Please note that the disclosed documents were received by REA from the coordinators of the concerned projects. They are disclosed to you for information only without the right to reproduce or exploit and they do not reflect the position of REA and cannot be quoted as such. Moreover, deliverables D4.2 of the project FOLDOUT is still subject to review and approval of REA.

In the light of the above, please find enclosed an expunged version of the deliverables partially disclosed. As regards the expunged parts of the documents and the documents to which access is refused, I set out below the reasons for the application of the invoked exceptions.

2.1. Protection of the public interest as regards public security

Article 4(1)(a), first indent of Regulation 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of the public interest as regards public security'.

Expunged parts of deliverable D4.2 of the project FOLDOUT describe use case scenarios, namely the potential threats to the border safety and security, as identified by the competent Law Enforcement Agencies (LEAs) of Bulgaria, Greece, Finland, Lithuania and French Guiana, the objectives of such scenarios, the potential actions, actors and the equipment to respond to such threats, as well as the relevant geographical areas/ pilot test areas.

Disclosure of such information could provide intelligence and insights to the strategy of the authorities, to those persons, groups or entities that could impede the authorities' efforts to counter illegal activities at the border, seriously undermining the public interest as regards public security.

Deliverable D2.2 of the project TRESSPASS includes classified EU-RESTRICTED information provided by EU Law Enforcement and Custom authorities, including risk indicators and analysis, and insight into current practices about risk identification at Border Crossing Points. The expunged parts of the deliverable D6.2 describe in details the border control process.

Disclosure of such information could reveal information to potential offenders on what they should avoid when attempting to perform a border related crime or act of terrorism (e.g. paying more attention to the risk indicators that are mostly controlled by the border authorities). In addition, potential offenders could receive insights of current vulnerabilities of systems (technological or human cognitive bias) and exploit them to overcome checks.

Deliverable D1.1 of the project ROBORDER includes classified EU-RESTRICTED information and analyses the developed Pilot Use Cases and the real operational scenarios of ROBORDER project. In addition, it establishes the main end-user requirements, as well as the required Concept of Operations.

Disclosure of such information could undermine the operational efficiency of the involved border authorities by revealing what type of activities they perform on a daily basis, thus significantly affecting the capacities.

The General Court has confirmed that ‘the institutions enjoy a wide discretion when considering whether access to a document may undermine the public interest and, consequently, [...] the Courts review of the legality of the institutions’ decisions refusing access to documents on the basis of the mandatory exceptions relating to the public interest must be limited to verifying whether the procedural rules and the duty to state reasons have been complied with, the facts have been accurately stated, and whether there has been a manifest error of assessment of the facts or a misuse of powers.⁶

In my view, disclosure of the withheld information could lead to misuse of the data and undermine the detection of illegal border activities.

I therefore conclude that the refusal of access to the withheld documents, or parts of them, is justified on the basis of Article 4(1)(a), first indent, of Regulation 1049/2001.

I would also like to point out that Article 4(1)(a) has an absolute character and does not envisage the possibility to demonstrate the existence of an overriding public interest.

2.2. Protection of privacy and the integrity of the individual

Article 4(1)(b) of Regulation 1049/2001 provides that ‘[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the 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 (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 (‘Regulation 2018/1725’).

Documents to which you request access contain personal data; in particular, deliverable D4.2 of the project FOLDOUT, deliverable D6.4 and Annex 1 of the project iBorderCtrl, as well as deliverable D6.2 and Annex 1 of the project TRESSPASS contain information related to identified or identifiable individuals involved in or linked to the projects, in particular names, functions, contact details and pictures.

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.

⁶ Judgement of the General Court, at the time Court of First Instance, of 25 April 2007 in case T-264/04, WWF European Policy Programme v Council, EU:T:2007:114, paragraph 40.

In its judgment in Case C-28/08 P (Bavarian Lager)⁷, 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 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, the transmission of personal data can 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 interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

After having carefully examined your request, the arguments relating to an overriding public interest, as further analysed under point 3, have not been considered relevant 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 interests might be prejudiced.

Notwithstanding the above, please note that there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

Having taken the above into consideration, I conclude that, pursuant to Article 4(1)(b) of Regulation 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by disclosure of the personal data concerned.

2.3. 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.

⁷ Judgment of 29 June 2010, *Commission v Bavarian Lager*, C-28/08 P, EU:C:2010:378.

Deliverable D4.2 of the project FOLDOUT, deliverable D6.4 and Annex 1 of the project iBorderCtrl, as well as deliverable D6.2 and Annex 1 of the project TRESSPASS, or part of them, to which you request access, contain consortia confidential information about the methodology, technologies, research approach and strategy as to how the consortia proposes to achieve the project results. Moreover, they contain *know-how* and intellectually property possible exploitable products/strategies which belong to the consortia.

The public disclosure of such information would undermine the commercial interests of the consortia of the projects FOLDOUT, iBorderCtrl and TRESSPASS within the meaning of Article 4(2), first indent, of Regulation 1049/2001, as it would give an unfair advantage to the (potential) competitors. By having access to commercially sensitive information in the documents requested, the competitors would be able to profit from it, as follows.

First, the public disclosure would give the competitors the opportunity to anticipate the strategies and weaknesses of the partners of the consortia, including when competing in calls for tenders and proposals.

Secondly, the public disclosure would give their competitors the opportunity to copy or use the intellectual property, *know-how*, methodologies, techniques and strategies of the consortia. The competitors would be able to employ this information in order to improve the production of their own competing products or provision of their own competing services. Furthermore, this would also result in the competitors having an unfair advantage when seeking and obtaining patents, approvals, authorisations and/or designations for their products or services.

Thirdly, the public disclosure would also undermine the possibilities of the partners of the consortia to obtain funding from existing and potential new investors. Given the competitive environment in which the project consortium operates, the information in question can only maintain its commercial value if it is kept confidential.

Fourthly, considering the sensitive nature of information in the documents, their public disclosure could also cause reputational damage to both (partners of the) consortia and the individuals linked with it.

Against this background, the disclosure would clearly adversely affect the competitive position of the consortia on the market and, in turn, seriously undermine their commercial interests, including their intellectual property.

I wish also to point out in this regard that, in accordance with Article 3 of H2020 Rules for participation, *“Subject to the conditions established in the implementing agreements, decisions or contracts, any data, knowledge and information communicated as confidential in the framework of an action shall be kept confidential, taking due account of Union law regarding the protection of and access to classified information.”*

This confidentiality provision is implemented in the H2020 Model Grant Agreement. Its Article 36 stipulates that *“During implementation of the action and for four years after the period set out in Article 3, the parties must keep confidential any data, documents or other material (in any form) that is identified as confidential at the time it is disclosed (“confidential information”).”*

Deliverables for which information are withheld are considered as ‘confidential’.

Please note that the General Court has addressed the issue of contractual confidentiality, under the EU Framework Programmes for Research and Innovation, in its Technion judgment⁸. It ruled that, if a contractual clause in the Grant Agreement provides that the Commission must use the documents and information, provided by a beneficiary, on a confidential basis, those documents and information cannot (within the timeframe set out in the Grant Agreement) be disclosed or released to persons not party to the contract.

The General Court confirmed that “disclosure of the documents on the basis of Regulation No 1049/2001 would undermine the very existence of that clause of the contract, inasmuch as it would allow persons not party to the contract, namely the general public, access to the abovementioned documents”.

The exception of Article 4(2), first indent, of Regulation 1049/2001 must, therefore, be interpreted also in line with the confidentiality provisions of the H2020 Rules for Participation and its implementing acts.

It is consistent case-law that when two regulations regulate access to documents, without one of them having precedence as in the present case, they have to be applied in a manner compatible with the other and which enables a coherent application of them⁹.

Furthermore, the exception of Article 4(2), first indent, of Regulation 1049/2001 has to be read also in the light of Article 339 of the Treaty on the Functioning of the European Union (TFEU), which requires staff members of the EU institutions to refrain from disclosing information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

I take the view that applying Regulation 1049/2001 cannot have the effect of rendering the above-mentioned provisions, in particular Article 339 TFEU, over which it does not have precedence, ineffective.

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 partially refused would undermine the commercial interests, including intellectual property, 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 state that “*All of the projects related to my request, are publicly funded projects. Thus, the public has a legitimate interest in accessing the results of publicly funded research.*”

You add that “*projects such as iBorderCtrl, TRESSPASS, and FOLDOUT are related to intrusive technologies that could lead to unlawful interferences with the rights to privacy and data protection.*” and that “*the research from projects such as ROBORDER ... could easily*

⁸ Judgment of the General Court in Technion v Commission, T-480/11, EU:T:2015:272, paragraph 58.

⁹ Judgment of 28 June 2012 in Commission v Éditions Odile Jacob SAS, C-404/10 P, EU:C:2012:393, paragraph 110.

been used in a later stage for military purposes, especially if you consider the fact that stakeholders from the defense field, such as the Hellenic Ministry of Defense, are involved in this project.” Therefore, you consider that “access to the requested documents is needed so that the public will be informed about the context and the results of the pilots of such research projects” and that “Only in this way, we could form a democratic debate on the proposed technology-led systems and their alleged added value in safeguarding the security of our communities”

As mentioned above, Articles 4(1)(a) and 4(1)(b) of Regulation 1049/2001 do not include the possibility for the exceptions defined therein to be set aside by an overriding public interest.

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, REA also recalls that the public interest in disseminating project results is guaranteed by the set-up of a coherent set of strategies and tools to disseminate results of finalized projects. Such disclosure 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.

Moreover, as mentioned above, the documents (or parts of them) non-disclosed to you refer, *inter alia*, to intellectual property, *know-how* and methodologies. Consequently, this information has commercial value and any disclosure could be used in detriment of the commercial interests of the consortia members and have a negative impact on their ability to successfully exploit the research results.

I would like to reassure you that the Commission and REA give highest priority to ethics and respect of fundamental rights in EU funded research, which must comply with established ethical principles and applicable law. Particular attention is paid to privacy, human rights and protection of personal data. It should be noted that all the submitted H2020 proposals are evaluated both on their scientific merit as well as their ethical and social impact. I therefore consider that the necessary guarantees have been put in place in order to ensure that H2020 projects are implemented under the most ethical conditions possible by the participating entities.

Considering the above-mentioned arguments establishing the foreseeable risk to harm the commercial interests or legitimate interests in the field of intellectual property of third parties that would result from the further disclosure of the deliverables, 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, in full or in part, and you have not presented sufficient elements demonstrating the existence of an overriding public interest in disclosure of the requested documents.

4. PARTIAL ACCESS

I have examined the possibility of granting partial access to the requested documents in accordance with Article 4(6) of Regulation 1049/2001. On this basis, as mentioned in section 2 above, partial access is granted to:

- Deliverable D4.2 “Use case and scenarios” of the project FOLDOUT and
- Deliverable D6.2 “Evolving CONOPS framework” of the project TRESSPASS.

5. CONCLUSION

Having re-examined your request, I have come to the conclusion that further access, without undermining the interests described above, is possible as follows:

- A partial access is granted to deliverables D4.2 “Use case and scenarios” of the project FOLDOUT and D6.2 “Evolving CONOPS framework” of the project TRESSPASS, subject to redactions based on Articles 4(1)(a), first indent (protection of the public interest as regards public security), 4(1)(b) (protection of the privacy and the integrity of the individual) and 4(2), first indent (protection of commercial interests of a natural or legal person) of Regulation 1049/2001.

REA considers that, in absence of overriding public interests, it has the duty not to grant access to the remaining parts of the requested documents and to the other requested documents, according to Articles 4(1)(a), first indent, 4(1)(b) and 4(2), first indent, of Regulation 1049/2001 as the prevailing interests are, in this case, the protection of the public interest as regards public security, of the privacy and the integrity and of the commercial interests, including intellectual property, of the third parties concerned.

6. 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,

(e-signed)

Marc TACHELET

Enclosures:

- Deliverable D4.2 “Use case and scenarios” of the project FOLDOUT
- Deliverable D6.2 “Evolving CONOPS framework” of the project TRESSPASS