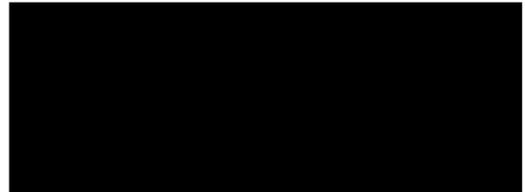




## EUROPEAN RESEARCH EXECUTIVE AGENCY (REA)

D1 Planning, Knowledge and Compliance  
**Head of Unit**

Brussels,  
REA D1.003



*Sent by registered email only to:*



**Subject: Your application for access to documents on the rejected Proposal Number: 883359, Enhanced Maritime Situational Awareness through Collection and Integration of Multiple data sources - Ares(2024)167824.**

Dear 

We refer to the request for access to documents submitted to the European Research Executive Agency (REA) on 14 December 2023, which inadvertently arrived in our junk mail folder.

On 5 January 2024 we requested you to indicate the name and surname of the person submitting the access to documents request for registering and handling your request<sup>1</sup>.

On 10 January 2024 your request was registered under reference number Ares(2024)167824 after you have provided the information requested, on 9 January 2024<sup>2</sup>.

### A. SCOPE OF YOUR REQUEST

In your application, you requested:

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<sup>1</sup> Ares(2024)65752

<sup>2</sup> and Ares(2024)17386.

*“Concerning the rejected Proposal (Number: 883359, Name: Enhanced Maritime Situational Awareness through Collection and Integration of Multiple data sources), we would therefore like to access:*

- the project proposal*
- all the documents detailing the project’s rejection”.*

This request is handled within the scope of Regulation (EC) No 1049/2001 (hereinafter “Regulation 1049/2001”) regarding public access to European Parliament, Council and Commission documents<sup>3</sup>.

## B. DISCLOSURE OF THE REQUESTED DOCUMENTS

Having examined the documents requested under the provisions of Regulation 1049/2001 regarding public access to documents, we consider that the documents that are listed in Annex 1 attached to this letter are related to your request.

In Annex 1 we specify the documents to be partially disclosed or to which public access cannot be granted (in full or in part) 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 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), 4(2) first indent of Regulation 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**

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”.

The proposal of the project, aimed to develop a powerful maritime patrol platform to ensure state of the art practices and technology with an aim to a practical cost-effective maritime security. Indeed, documents 1, 9, 10 and 11 in Annex 1, the proposal and the documents with clarifications to the proposal, contains information on future technology and algorithms and identified gaps on how to effectively ensure maritime security and actors’ potential vulnerabilities, which could be exploited by malevolent people. Additionally, these documents also provide potential strategic and tactical solutions, which might have intellectual property attached to them and therefore should not be made publicly available.

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

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<sup>3</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.

maintain maritime security, seriously undermining the public interest as regards public security.

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<sup>4</sup>.

We therefore conclude that partial access to the document, as extracted in the abstract, is justified on the basis of Article 4(1)(a), first indent of Regulation 1049/2001.

We 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.

### **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 (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>5</sup> (hereinafter “Regulation 2018/1725”).

Some of the documents to which you requested access (documents nr. 1, 2, 9, 10, 12, 13 and 14 in Annex 1), contain personal data of individuals, such as the names, surnames, and signatures of staff of REA or of the beneficiaries participating in the proposal 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>6</sup>.

In its Judgment in case C-28/08/P (Bavarian Lager)<sup>7</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, the Data protection

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<sup>4</sup> 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.

<sup>5</sup> Official Journal L 205 of 21.11.2018, p. 39

<sup>6</sup> 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](#).

<sup>7</sup> Judgment of 29 June 2010 in case C-28/08/P, *European Commission v The Bavarian Lager Co. Ltd*, EU:C:2010:378, paragraph 63.

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 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.

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.

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**

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 nr. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13 and 14 in Annex 1 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, access rights), licensing terms, knowhow, methodologies, acronym, strategies to implement the project, technologies, state-of-the-art-tools, working

modalities, financial data, commitment of resources, allocation of resources, consortium composition, estimated budget, 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 1049/2001 has to be invoked and access to the concerned documents or part of them 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 documents.

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  
North Light Building  
Boulevard Simon Bolivar 34,  
1000 Brussels

Or by e-mail to: [marc.tachelet@ec.europa.eu](mailto:marc.tachelet@ec.europa.eu)

Yours sincerely,

Qualified electronic signature by:



Enclosures:

- Annex 1
- 1. Proposal-Abstract – Redacted.
- 2. GAP termination letter final – Redacted
- 3. Request to Applicant for Information - document\_1- Redacted
- 4. Request to Applicant for Information - document\_2- Redacted

5. Request to applicant for Information\_document\_3 - Redacted
6. Evaluation Summary Report – Redacted
7. Ethics Summary Report – Redacted
8. SEC-Evaluation Summary Report- Redacted
12. Rejection Letter – Redacted
13. GAP termination reminder - Redacted
14. The rejection decision - Redacted