



R&I family AtD coordinators

Meeting of 2 June 2021

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Draft agenda

1. Welcome and introduction
2. AtD requests relevant for the R&I family
3. Updates/exchanges of practice in handling AtD requests
4. AOB

AtD requests relevant for the R&I family

1. GestDem 2020/7446 (3rd party opposition to disclosure of publishable docs)
2. GestDem 2021/1135 (repetitive request, no change in circumstances)
3. GestDem 2021/0362 (wide-scope request for ethics requirements)
4. *Basaglia* judgment - exchanges on its application (commercial interests)
5. Other relevant AtD requests/topics

GestDem 2020/7446 (3rd party opposition)

- During the third-party consultation at the initial stage, the project coordinator opposed to the disclosure of the final report for the protection of the commercial interests of the Consortium (Art 4(2) of Regulation 1049/2001)
- The final report contained a *publishable summary*, already (publicly) available on CORDIS, in accordance with the Grant Agreement
- Initial reply to the AtD request in subject: the CORDIS web link to the publishable summary was provided and the remaining of the final report was not disclosed in application of the exception laid down in Art 4(2)

GestDem 2021/1135 (repetitive request)

- First AtD request - GestDem 2019/6682 (EP assistant)
- The request concerned the Commission Decision C(2019) 6504 - enforced recovery based on Art 299 TFEU
- Following our consultation, the Secretariat General replied that, in principle, no access should be granted (commercial interests exception) - no disclosure
- Second request - GestDem 2021/1135
- As the debt is still not recovered, the circumstances have not changed – access was denied again based on the same exception

GestDem 2021/0362 (wide-scope request)(1)

- In August 2019 the applicant [REDACTED] asked REA for:
 - *a table of all applications for H2020 funding which have received funding with conditional ethics clearance and the contractual requirements imposed for conditional ethics clearance in each case;*
 - *copies of GAs, including the ethics requirements listed in Appendix 1 in each case, for all projects receiving H2020 funding with conditional ethics clearance*
- In its confirmatory decision, REA validated in November 2019 that, although the information falling under the scope of the request was available, it could not be extracted through a routine search operation

GestDem 2021/0362 (wide-scope request)(2)

- In 2020, the RTD's IT services made the necessary changes to the CORDA reporting tool to allow for such extraction in the future
- In its closing decision of end October 2020, the EO confirmed that “*the particular information falling within the scope of the (initial and confirmatory) requests can now be extracted through normal or routine search operations, using pre-programmed search tools*” and closed the September 2020 inquiry
- The EO encouraged the applicant to make a new request for public access to documents

GestDem 2021/0362 (wide-scope request)(3)

- In January 2021 the applicant requested to REA:
 - *a table of all applications for H2020 funding which have received funding with conditional ethics clearance, and*
 - *the contractual requirements imposed for conditional ethics clearance in each case.*
- As the request concerned *all applications for H2020 funding*, it was reattributed to DG RTD

GestDem 2021/0362 (wide-scope request)(4)

- A table containing the 16 656 grants signed under H2020 until 5 February and having the ethics opinion *conditionally cleared* has been sent to the applicant
- In addition to answering to the 1st part of the request, the table served as the basis for inviting the applicant to reduce the material scope of the 2nd part of his request to 20 projects
- The initial scope of this 2nd part of the request (*“the contractual requirements imposed for conditional ethics clearance in each case”*) was larger than what could have been dealt with within the deadline for handling the request

GestDem 2021/0362 (wide-scope request)(5)

- The applicant agreed to reduce the material scope of point b) of the request and sent a list of *“20 grants identified from within the data sent”,* and requested *“a list of both pre- and post-signing conditions attached to each”*
- At the same time he made another request, for *“this list of 16 656 grants, with numbers indicated for each grant as to how many pre- and post-signing conditions have been applied (just the number of them, and no further info)”*, which was answered in February

GestDem 2021/0362 (wide-scope request)(6)

- The 20 projects (under the reduced material scope of the initial request), with 162 ethics requirements, were assessed by CNECT (3 grants), EISMEA (4), ERCEA (2), REA (10), and SESAR (1)
- Most of the requirements (required either before or after the signature of the grant) concerned data protection; some of them contained standard wording
- Partial access has been granted to the list of 162 ethics requirements of the 20 projects selected by the applicant (personal data – 2 requirements; commercial interests – 4; decision-making process after the decision has been taken – 1)

GestDem 2021/0362 – points to remember

- Judgment of the Court of January 2017 in [Case C-491/15 P](#), *Typke v Commission*: any information whose extraction would require a substantial investment, i.e. requiring an alteration to the search tools currently available for the extraction of information, is to be regarded as a 'new document'
- For wide-scope requests, take into account: the number, type, complexity, specific content, sensitivity and possibly classified nature of the information; the diversity of the third parties from which the information originates; the number of services to consult; and the human resources available to deal with the request, taking into account the other applications received during the same timeframe from other applicants and the other activities dealt with by the staff concerned

Basaglia judgment (commercial interests)(1)

- The *Basaglia* judgment concerns sensitive commercial information (in contractual documents) which is 5 or more years old
- ERCEA handled recently a case where the applicant requested access to the grant applications, interim and final reports of 3 ERC projects, 2 of them being closed in 2015 and 2016
- The commercial sensitive information included in the requested documents being older than 5 years, it should not be protected further, unless, by way of exception, it is proven that such information still constitutes an essential element of the commercial position of the undertaking to which it relates

Basaglia judgment (commercial interests)(2)

- In accordance with the SG practical guidance on the implementation of this judgment, ERCEA consulted the grant beneficiary (as the third party originator of the requested documents) to provide specific justification if, in their view, the commercial interests still require the protection of the contents of the requested documents
- The grant beneficiary objected to the disclosure of the details related to the budget and resources of the projects, in application of the commercial interests exception

Other relevant AtD requests/topics?

Updates/exchanges of practice

1. Assisting citizens in exercising their rights under Regulation 1049/2001
2. Court case T-158/19 *Breyer v REA* – redaction of documents
3. Protection of the purpose of inspections, investigations and audits
4. Introduction to EASE (Electronic Access to Commission Documents)

Assisting citizens in exercising their rights

- *Each institution should take the measures to train its staff to assist citizens exercising their rights under Regulation 1049/2001*
- GestDem 2021/1872 and 2021/1893: both applicants requested the Commission Decision C(2014) 3758/1 on the conclusion of the Delegation Agreement (DA) between the EU, the EIB and the EIF in respect of the Financial Instruments under H2020; this confidential DA has been already amended 10 times
- Following our requests for clarifications, both applicants confirmed their interest in the latest version of the (amended) DA, currently in force

Court case T-158/19 *Breyer v REA* (1)

- Pleas in law and main argument:
 - Misapplication of the first indent of Art 4(2) of Regulation 1049/2001 (the commercial interests exception) for the project Intelligent Portable Border Control System (**iBorderCtrl**), researching into new technologies for immigration control, such as the introduction of an 'automated lie detection' and the calculation of a risk value
 - Misapplication of Art 7(1) and 8(1) of Regulation (processing of initial and confirmatory applications)
 - Overriding public interest in the disclosure of the requested documents

Court case T-158/19 *Breyer v REA* (2)

- REA processed the application for access to documents on the execution of the **iBorderCtrl** project
- The General Court reopened the oral procedure as apparently the applicant was able to technically un-redact parts of the documents received and could, thus, claim an overriding public interest: *“While **iBorderCtrl** is publicly presented only as a research project, EU funds have, in fact, already been working on pushing forward fundamental rights restrictions through legislative changes (presumably contrary to fundamental rights) in order to enable the technology to be used in practice. The fact that lobbying is financed by EU research money is obviously an information of overriding public interest”*

Court case T-158/19 - conclusions

- The **permanent** redaction of the partially released documents is of an outmost importance
- Please use properly Adobe Acrobat Professional for redactions
- Redactions become irreversible only when they have been applied correctly and the document has been saved

Inspections, investigations and audits

- Any experience on the application of this exception to review reports drawn up on the basis of Art 22.1.2 of the H2020 MGA, maybe in analogy with the audit reports drawn up under Art 22.1.3?
- For interim and final review reports (after the institution receives the documents), the 2020 CLSS guidelines on public access to the R&I programmes documents suggest partial release, based on the personal data and commercial interests exceptions (GestDem 2020/0386)

Introduction to EASE

[Electronic Access to Commission Documents](#)

What is it?

- The **Register of Commission Documents** (RegDoc) – main register of Commission documents, set up in 2001
- Project ‘New Register of Commission Documents’ (2019-2021)
- Live since 19 May 2021

What is new?

- New user interface
- Improved search functionalities
- New IT architecture (allowing integration with other registers, e.g. RegDIA)
- RegDoc – a single entry point for Commission documents

Situation before on RegDoc

Documents on RegDoc published as:

- a) metadata **only** (document title, date, author, type), without the pdf file, or
- b) metadata **and** pdf file

Consequence:

- Large number of requests concerning point a)

Main advantages of EASE (1)

- Only the final version of the documents are published (no more previous versions), which is very useful, as many times the applicants were confused about the numbers of the versions of the documents requested (F1, /1, etc.)
- Nevertheless, for the documents published until May 2021 the previous versions are kept, but displayed under the “history” of the final version
- The “Request document” button will appear after 48 hours following the publication of the metadata of the final version

Main advantages of EASE (2)

- New document types:
 - Documents not published at all today:
 - Draft impact assessments / draft evaluations (Q2 2021)
 - pdf files for some documents published today on RegDoc only as metadata
 - Joint documents, certain implementing acts, documents transmitted to other institutions, corrigenda etc.

New features (still to come)

- Possibility for DGs to publish themselves an individual document directly from Decide on RegDoc (when only metadata are published on RegDoc) - this requires some developments in Decide

Any Other Business

- RTD Access to documents basic training
 - 2 sessions of 2 hours each (22 March and 31 May)
 - 39 attendees in total
- Latest developments as regards the update of the SG/BUDG guidance note on access to information and documents related to procurement and grants