



R&I family AtD coordinators

Meeting of 15 December 2021

rtd-access-documents@ec.europa.eu

Draft agenda

1. Welcome and introduction
2. Policies and practices to give effect to the right of access to documents
3. Working modalities and procedures of interaction within the R&I family
4. AtD requests relevant for the R&I family
5. AOB

Policies and practices to give effect to the right of AtD

- European Ombudsman's Strategic Initiative SI/7/2021/DL
 - Policies and practices EU institutions, bodies, offices and agencies should have in place so that they can fully implement their obligations to give effect to the fundamental right of public access to documents. Key points include:
 - policy on document registration and retention, as well as on publication of documents;
 - publish policies on websites;
 - public register of documents;
 - publish a report or include a dedicated section in annual report on AtD requests;
 - dedicated AtD section on website, including information on the fundamental right of public access to documents, its legal basis and the internal rules the institution has in place;
 - provide information in plain and accessible language about how to submit an AtD request, including information on redress
 - consider putting in place a user-friendly submission form for requesting AtD, containing guidance on the information that needs to be included when submitting a request; also publish the e-mail address of the functional mailbox of the AtD operating section or team

Policies and practices to give effect to the right of AtD

- Documents can be accessed and/or requested on:
 - [Register of Commission Documents](#);
 - [Comitology Register](#);
 - [Register of delegated acts](#);
 - Commissioners' web pages: meetings between Commissioners / their members of Cabinet and external stakeholders; Commissioners' mission costs and agendas
- General info on access to documents on the Commission's website:
 - [How to access Commission documents](#)
- Document registration and retention:
 - Ø [Guidelines on document registration](#)
 - Ø The common Commission-level retention list for European Commission files (SEC(2019)900/23)

Policies and practices to give effect to the right of AtD

- EASE (Electronic Access to European Commission Documents)
 - Ø Consists of two modules:
 - Ø a) a new, dedicated online portal for citizens;
 - Ø b) a new IT tool for handling requests for access to documents by the Commission staff (to replace GestDem)
 - Ø Benefits for citizens: submit initial and confirmatory requests; receive guidance and explanations of the process; have overview of ongoing and closed cases; communicate with the Commission; receive replies to their requests; manage their accounts and personal data; search for previously disclosed documents
 - Ø R&I documents available on [CORDIS](#) and [Funding & Tenders Portal](#)
 - Ø Possible coordinated approach in the R&I family?

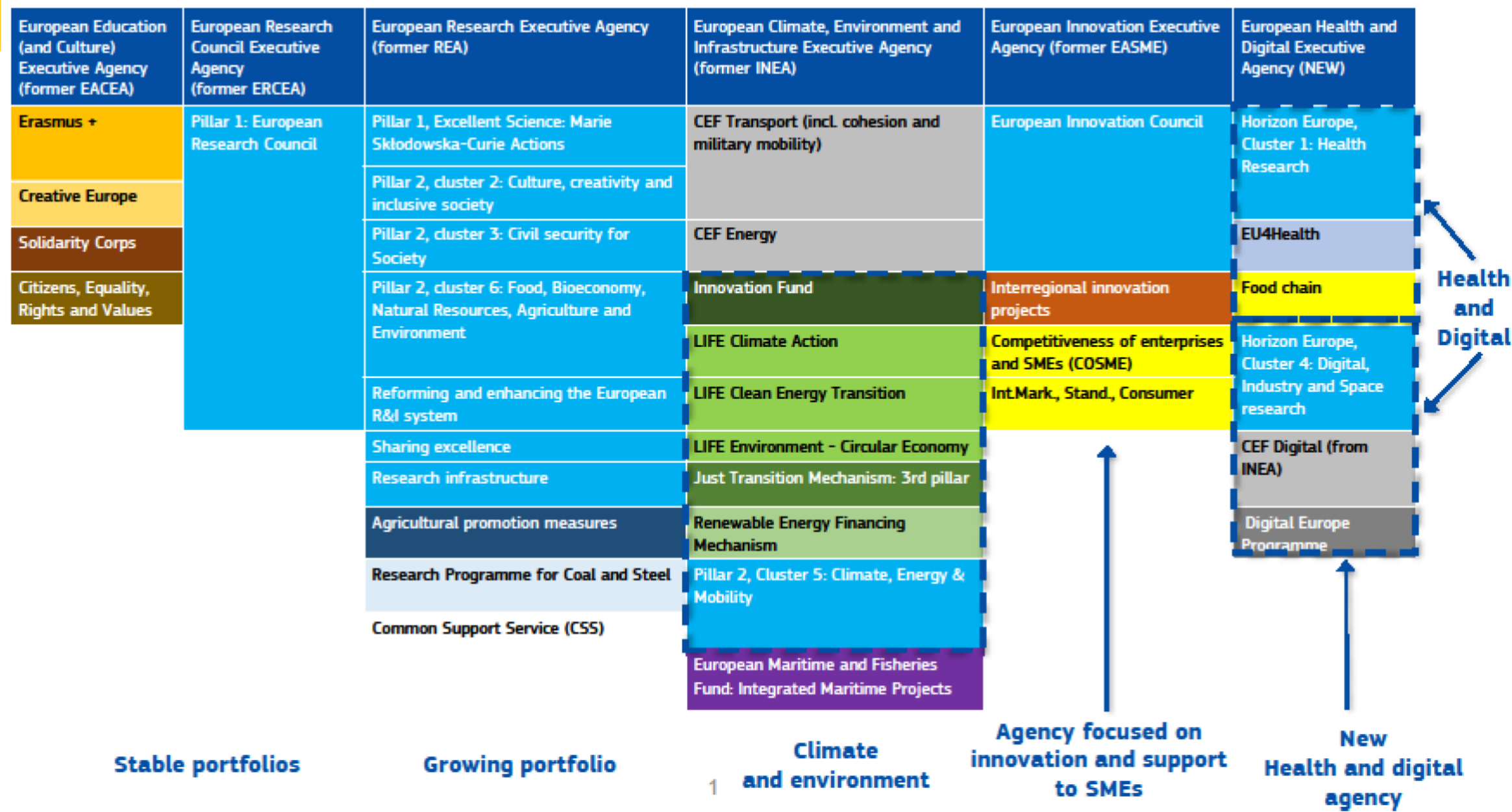
Working modalities and procedures of interaction

Agency	Acronym	Lead parent	
		DG	Other parent DGs
European Education and Culture Executive Agency	EACEA	EAC	CNECT, INTPA, JUST, NEAR, EMPL
European Research Council Executive Agency	ERCEA	RTD	RTD
European Research Executive Agency	REA	RTD	AGRI, CNECT, EAC, EMPL, ENV, HOME
European Climate, Infrastructure and Environment Executive Agency	CINEA	MOVE	CLIMA, ENER, ENV, MARE, REGIO, RTD
European Innovation Council and SMEs Executive Agency	EISMEA	RTD	CNECT, GROW, JUST, REGIO
European Health and Digital Executive Agency	HaDEA	SANTE	CNECT, DEFIS, GROW, RTD

General provisions of the MoU (3.10.2)(1)

- The concerned parent DG coordinates the handling of the requests for access to documents falling under the responsibility of both the parent DG and the Agency.
- [...] in order to avoid inconsistencies in the provided replies as regards the identification of [the] documents, the [...] parent DG and the Agency should consult each other in order to reach an agreement on the service responsible for handling the requests.

New final allocation with new Health & Digital Agency



General provisions of the MoU (3.10.2)(2)

- In case of requests for access to documents held by one or several parent DGs and one or several Agencies, the choice of [the] lead service will be made on a case-by-case basis, depending on the scope of the request (i.e. the policy portfolio to which it relates, the parent DGs/Agencies to which the applicant explicitly addresses the request etc.)
- In principle, the parent DG responsible for the policy area to which the request relates should assume the role of lead service.

General provisions of the MoU (3.10.2)(3)

- Acting as lead service entails ensuring that there are no gaps or overlaps in the identification of documents and that the replies follow a coherent approach, each parent DG/Agency remaining responsible for assessing the documents and providing the reply to the applicant regarding its own documents.
- The lead service and the DGs/Agencies should consult each other, including on the interpretation of the scope of the request and on the substantive assessment of the concerned documents.

AtD requests relevant for the R&I family

1. Application of the provisions of the Aarhus Convention (EISMEA)
2. GestDem 2021/5421 (consortium agreement following voting on GA)
3. GestDem 2021/6048 & 2021/0151 (old & previous Cabinets documents)

Application of provisions of Aarhus Convention

- 4 very similar **confirmatory access requests**
- 4 different H2020 GAs with environmental actions (mining activities)
- all requests from the same entity, an environmental NGO
- arguments for the existence of an **overriding public interest** for the disclosure of **commercially sensitive information** contained in the description of the actions
- invoked the application of the **Aarhus Convention**
- contained also lots of **additional info** or **allegations** ([REDACTED] replied separately)

⇒ *we consulted the CLSS for guidance & advice*

Overriding public interest - Aarhus Convention

- Initial request - no disclosure of information which may reveal commercial interests, including intellectual property
- Confirmatory request: Invoked overriding public interest in disclosure for :
 - transparency in allocation of public funding
 - licences to operate mines in the EU
 - transparency and validity of democratic process in the EU
 - projects are supposed to provide Commission with input for its policy tasks, influence future EC guidelines, directives - like preparatory steps of legislative process

Aarhus Convention

- Art 6(1) of Regulation [1367/2006](#) establishes a **legal presumption** that an overriding public interest in disclosure exists where the information requested relates to **emissions into the environment**
- even if such **disclosure is liable to undermine** the protection of the **commercial interests** of a particular natural or legal person, including that person's intellectual property (Art 4(2), first indent, Regulation 1049/2001)
- other exceptions of Art 4 of Regulation 1049/2001: the **grounds for refusal** shall be interpreted in a **restrictive way**, taking into account the public interest served by disclosure and whether the information requested relates to emissions into the environment

Aarhus Convention

- The institution may refuse access to environmental information where disclosure would adversely **affect the protection of the environment** to which the information relates, i.e. breeding sites of rare species.
- The interpretation of the notion of ‘**information relating to emissions into the environment**’ has to be related ‘in a **sufficiently direct manner** to emissions into the environment’.
- Requester invoked that *“during the implementation of the project, many legal environmental, social and safety regulations [...] apply to the project’s exploitation activities, test sites, and pilot operation, it can only be concluded that, due to the emissions into the environment, an overriding public interest is manifest.”*

Examples of disclosures

Table 1.6: Emission limits for use of construction end-products (taking the lowest limits from combining legislation of the EU Member States). Based on the standardised test method EN 12457 1/4.

(mg/kg d.s.)	Sb	As	Ba	Cd	Cr	Co	Cu	Hg	Pb	Mo	Ni	Se	Sn	V	Zn	F	Cl	SO ₄	Br-
	0.06	0.5	20	0.03	0.5	0.5	0.8	0.01	0.3	0.5	0.4	0.1	0.4	1.8	2.8	10	616	1000	20

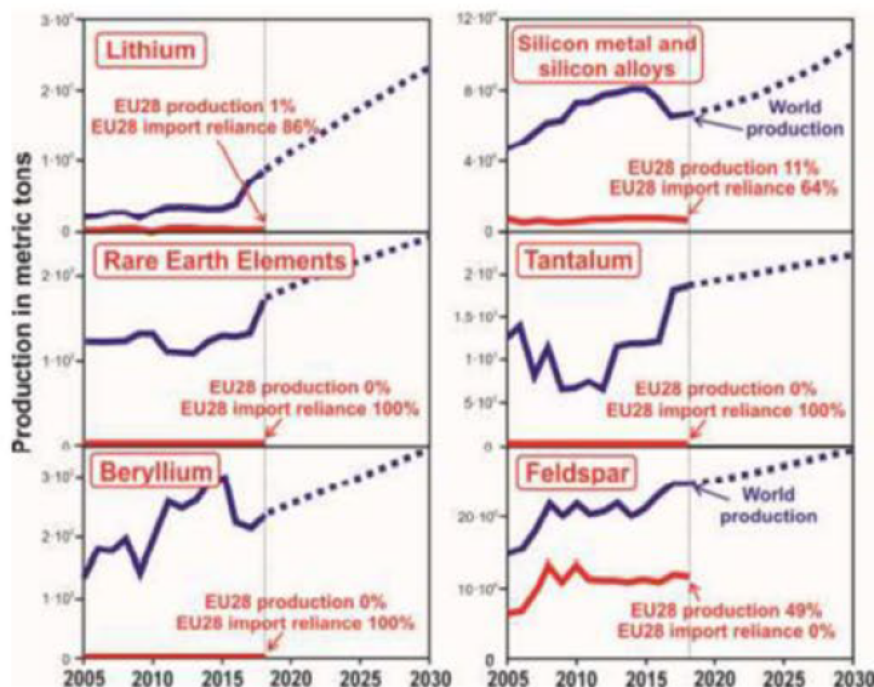


Figure 1.1a. Comparison of world (blue lines) and EU28 country (red lines) production of silicon, feldspar, Li, REE, Ta, and Be from 2005, with prediction of world production up to 2030. With the exception of feldspar, 90 to 100% of these raw materials are imported by the EU28 countries. Data for Cs are not available. Source: [2].

Table 1.1a. exploration target commodities (hosted in pegmatite type deposits) with indicated World/EU mine production, EU import reliance, net EU import, end of recycling input rate, major uses and predicted EU demand in 2025. Source: [3]

GREENPEG target commodity	World/EU mine production (tonnes)	EU import reliance (%)	Net EU import* (tonnes)	End of recycling input rate (%)	Major end uses in EU	Expected EU demand in 2025 (tonnes)
Lithium	84,700/800	86	5,000	0	Glass and ceramics (57%), batteries (25%) , cement (6%), lubricating greases (6%)	20,000
Silicon metal (produced from high purity silica)	2,288,000/195,000	64	344,000	0	Chemical applications (54%), aluminium alloys (38%), solar cells and electronics (8%)	500,000
Feldspar	26,792,265/10,395,772	0	-3,600,000	10	Ceramics (36%), flat glass (30%), container glass (30%)	10,000,000
Rare earth elements	135,650/0	100	8,350	1	Catalysts (23%), super magnets in wind turbines (22%) , alloys (16%)	20,000
Tantalum	1800/0	100	80	1	Capacitors (33%), super alloys (22%), sputtering targets (17%)	200
Beryllium	300/0	100	50	0	Electronic and tele-communication equipment (42%), transport and defence (44%), energy applications (8%) , industrial components (6%)	100
Caesium	10/0	100	2	85	Drilling fluids for oil and gas production (95%), photoelectric cells (3%) , fluoroscopy equipment (1%), atomic clocks (1%)	3

* Net EU import = Import minus export

¹ European Commission (2019) Critical Raw Materials. <https://ec.europa.eu/growth/sectors/raw-materials/specific-interest/critical_en> Accessed 1 June 2019.

² USGS (2017) Commodity Statistics and Information <<https://minerals.usgs.gov/minerals/pubs/commodity/>> Accessed 12 January 2017.

GestDem 2021/5421 (consortium agreement)

- **Horizon H2020-Euratom-1 ID 945098 PREDIS (PRE-DISposal management of radioactive waste)**
- **Documents requested:**
 1. Grant Agreement Annex 1 "Description of the Action" (all parts, A, B, etc.);
 2. Documents that outline the configuration of the management and guidance entities of the project (e.g. steering group, advisory board).
- **Special consortium agreement. Unanimity vote for 47 participants if Annex 1 could be disclosed.**
- **Consortium agreed to proceed with voting for disclosure.**
- Negative answer, with the invitation to submit a new request after 30 days to get access to Annex 1, depending on the vote.
- This represents a change in practice, as a negative answer was sufficient at this stage. We went one step further.

GestDem 2021/6048 & 2021/0151 (old docs)

- a. Review: CRL and ARP
- b. Documents older than 30 years
- c. Documents from previous Cabinets

a. CRL and ARP (1)

The [Common Commission-level retention list for European Commission files](#) (**CRL**) sets the administrative retention periods (**ARP**) and [follow-up actions](#) for the different types of official Commission files.

Document identification ➡ Yⁿ ARP

- **DG/Service** until first review: elimination or transfer (sam/sel) to Historical Archives
- **Historical Archives**: Second review for elimination or preservation (sam/sel)
- Access to the Historical Archives after 30 years (Regulation No 354/83)

See: [Implementing Rules for Decision C\(2020\) 4482 on records management and archives](#)

a. CRL and ARP (2)

FILE TYPES	DESCRIPTION	ARP (Administrative retention period)	DISPOSAL		LEAD DEPARTMENT	OBSERVATIONS
			POST-ARP ACTION OR FIRST REVIEW: THA: transfer to the Historical Archives. EL: elimination SAM/SEL: sampling and/or selection	ACTION FOLLOWING TRANSFER TO HISTORICAL ARCHIVES PP: Permanent preservation, 2nd REVIEW: Second review		
PROGRAMMES, PROJECTS AND GRANTS						
Direct management of EU programmes, pilot and preparatory actions, grants and macro-financial aid		These files concern the direct management by the Commission or executive agencies of EU programmes and other direct financing of projects and actions using operating appropriations. It also involves all external aid and international cooperation programmes, aid and grants under international agreements, macro-financial aid to third countries and projects and grants under devolved management by EU Delegations in third countries.				
7.1.1	Work programmes, annual action programmes, planning and reporting, including where appropriate coordination of tasks with the executive agency	Files reflecting the drawing up and adopting of the work programme (e.g. annual action programme for development aid) and the necessary planning and reporting instruments for implementation of the programme (in both technical and financial terms), on the basis of implementing powers conferred by the legislative act setting up the programme.	10 years	THA	PP	DG
7.1.2	Procedures for award of grants	Files covering the preparation and publication of calls for proposals, the evaluation of applications for grants and the selection of projects for financing. Management of preparatory files for grants for which, as an exception, no call for proposals has been launched.	10 years L ₃ T ₁	SAM/SEL	2nd review	DG
7.1.3	Management of grant agreements and decisions	Files which start with the signing of the grant agreement or notification of the grant decision and continue up to the last payment by the Commission. These files cover both technical and financial documentation, including audits where appropriate.	10 years L ₁ and L ₃	SAM/SEL	2nd review	DG

T ₁	Elimination after five years of all non-selected proposals.
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L ₃	Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, (OJ L 193, 30.7.2018) [art. 58]
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b. Documents older than 30 years

Requests to be transferred to the Historical Archives and dealt under the consolidated version of [Regulation \(EEC, Euratom\) No 354/83](#).

Examples:

- Documents relating to old projects (1980s);
- EC proposal from 1979 quoted in Conclusions of ECJ Attorney General;
- Internal note from 1987 on EC proposals to VP.

c. Documents from previous Cabinets (1)

SG GUIDELINES - [Fiche 6 - Access to documents from Cabinets](#)

The documents of former Commissioners and their Cabinets are transferred to the Historical Archives at the end of the mandate of each College. AtD case handlers may request these documents directly to the Historical Archives on the condition that the documents are:

- related to portfolio of the former Commissioner for which the DG is responsible
- needed to process public AtD requests based on Regulation 1049/2001


c. Documents from previous Cabinets (2)

- Since 1 January 2016, the requirement to obtain the agreement of the former Head of Cabinet or Deputy Head of Cabinet on public access to documents from former Cabinets has been abolished - Note [Ares\(2015\)5517046](#)
- Whether or not to seek the opinion of the current Cabinet is a matter of DG internal procedure – unless sensitive content

➡ *Coordinated approach?*

iBorderCtrl case T-158/19 Breyer v REA

Form of order sought:

- Annul the Commission's decision of 17 January 2019 bearing the reference Ares(2018)6073379 with respect to an access to documents request
- Misapplication of the first indent of Article 4(2) of Regulation (EC) No 1049/2001 (protection of commercial interests) - disclosure of documents concerning the approval and execution of the iBorderCtrl research project would not negatively impact the protection of the commercial interests of the consortium's members. Further, the applicant claims that there is an overriding public interest in the disclosure of the documents at issue
-  said in a statement
- Judgment delivered on 15.12.2021 at 11:00