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

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

**Stable portfolios**
- European Education (and Culture) Executive Agency (former EACEA)
- Creative Europe
- Solidarity Corps
- Citizens, Equality, Rights and Values

**Growing portfolio**
- Pillar 1: European Research Council
- Pillar 1, Excellent Science: Marie Skłodowska-Curie Actions
- Pillar 2, cluster 2: Culture, creativity and inclusive society
- Pillar 2, cluster 3: Civil security for Society
- Pillar 2, cluster 6: Food, Bioeconomy, Natural Resources, Agriculture and Environment
- Reforming and enhancing the European R&I system
- Sharing excellence
- Research infrastructure
- Agricultural promotion measures
- Research Programme for Coal and Steel
- Common Support Service (CSS)

**Climate and environment**
- Pillar 2, Cluster 4: Climate, Energy & Mobility
- European Climate, Environment and Infrastructure Executive Agency (former INEA)
- LIFE Climate Action
- LIFE Clean Energy Transition
- Renewable Energy Financing Mechanism

**Agency focused on innovation and support to SMEs**
- Pillar 2, Cluster 5: Climate, Energy & Mobility
- European Innovation Council
- European Innovation Council
- CEF Transport (incl. cohesion and military mobility)
- Interregional innovation projects
- Competitiveness of enterprises and SMEs (COSME)
- Food chain
- Int.Mark, Stand., Consumer
- Just Transition Mechanism: 3rd pillar
- European Environment - Circular Economy
- EuropeAid - Third countries
- CEF Digital (from INEA)

**New Health and digital agency**
- Health and Digital
- Horizon Europe, Cluster 1: Health Research
- Horizon Europe, Cluster 4: Digital, Industry and Space research
- Digital Europe Programme
- EU4Health
- Food chain

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**Legend:**
- Health and Digital
- New Health and digital agency
• 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 (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
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 | Cu | Hg | Pb | Mo | Ni | Se | Sn | V | Zn | F | Cl | SO4 | Br-
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<tbody>
<tr>
<td></td>
<td>0.06</td>
<td>0.5</td>
<td>20</td>
<td>0.03</td>
<td>0.5</td>
<td>0.5</td>
<td>0.8</td>
<td>0.01</td>
<td>0.3</td>
<td>0.3</td>
<td>0.5</td>
<td>0.1</td>
<td>0.4</td>
<td>0.4</td>
<td>1.8</td>
<td>2.8</td>
<td>10</td>
<td>616</td>
</tr>
</tbody>
</table>

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: [1].

Table I.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 expected EU demand in 2025. Source: [2].

<table>
<thead>
<tr>
<th>GREENPEG target commodity</th>
<th>World/EU mine production (tonnes)</th>
<th>EU import reliance (%)</th>
<th>Net EU import* (tonnes)</th>
<th>End of recycling input rate (%)</th>
<th>Major end uses in EU</th>
<th>Expected EU demand in 2025 (tonnes)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lithium</td>
<td>84,700/800</td>
<td>86</td>
<td>5,000</td>
<td>0</td>
<td>Glass and ceramics (57%), batteries (25%), cement (6%), lubricating greases (6%)</td>
<td>20,000</td>
</tr>
<tr>
<td>Silicon metal (produced from high purity silica)</td>
<td>2,288,000/195,000</td>
<td>64</td>
<td>344,000</td>
<td>0</td>
<td>Chemical applications (54%), aluminium alloys (38%), solar cells and electronics (8%)</td>
<td>500,000</td>
</tr>
<tr>
<td>Feldspar</td>
<td>26,792,265/10,395,772</td>
<td>0</td>
<td>-3,600,000</td>
<td>10</td>
<td>Ceramics (36%), flat glass (30%), container glass (20%)</td>
<td>10,000,000</td>
</tr>
<tr>
<td>Rare earth elements</td>
<td>135,650/0</td>
<td>100</td>
<td>8,350</td>
<td>1</td>
<td>Catalysts (23%), super magnets in wind turbines (22%), alloys (18%)</td>
<td>20,000</td>
</tr>
<tr>
<td>Tantalum</td>
<td>1800/0</td>
<td>100</td>
<td>80</td>
<td>1</td>
<td>Capacitors (33%), super alloys (22%), sputtering targets (17%)</td>
<td>200</td>
</tr>
<tr>
<td>Beryllium</td>
<td>300/0</td>
<td>100</td>
<td>50</td>
<td>0</td>
<td>Electronic and tele-communication equipment (42%), transport and defence (44%), energy applications (8%), industrial components (8%)</td>
<td>100</td>
</tr>
<tr>
<td>Caesium</td>
<td>10/0</td>
<td>100</td>
<td>2</td>
<td>85</td>
<td>Drilling fluids for oil and gas production (95%), photovoltaic cells (3%), X-ray equipment (1%), atomic clocks (1%)</td>
<td>3</td>
</tr>
</tbody>
</table>

* Net EU import = Import minus export

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
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 → Y^n 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)
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)

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?
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

- [Redacted] said in a statement

- Judgment delivered on 15.12.2021 at 11:00