

**Guidelines for the assessment of different types of deliverables
based on the judgment in Breyer case T-158/19**

Requested documents	REA's position	Court review
D 1.1 <i>Ethics advisor's first report</i>	Refusal (commercial interest)	OK to redact ethical and legal evaluation of project's tools, technological components, methodologies, including issues to take into account in their development to ensure ethical principles and fundamental rights, in both research and utilization phases. However, the following was gathered from public information: EU policy on border management, the relevant state of law and the opportunity to improve it via new technologies, the legal framework on data protection and ethical and legal issues concerning new tech in this area that can be raised independently from the project.
D 1.2 <i>Ethics of profiling, the risk of stigmatization of individuals and mitigation plan</i>	Refusal (commercial interest)	OK to redact ethical and legal evaluation of project's tools, technological components and methodologies, including the examination of possible risks of the technologies involved in stigmatizing groups and individuals, issues relating to false negatives, etc. However, data gathering from information publicly available (see D 1.1.) do not correspond to the consortium commercial interests.
D 1.3 <i>Ethics Advisor</i>	Refusal (commercial interest)	In its decision, ERA considered that this document included the evaluation of the technologies and methodologies involved in the project, for which the agency invoked the protection of the commercial interest. However, as later confirmed by the agency (but not mentioned in its decision), the document rather reports personal and business data of the external Ethic advisor, which is still not relevant for the commercial interests of the consortium.
D 2.1 <i>Requirement Analysis Report</i>	Refusal (commercial interest)	There is information preparing the actual analysis on the implementation of the project that are not covered by the protection of the members' commercial interests. They concern, for instance, border management and security issues in the relevant member States, which constitute a public issue rather than a business secret of the consortium. Moreover, the document contains information on tech developments in the area of the project, which is data gathered from publicly available

		sources and of which REA did not prove the commercial added value.
D 2.2 Reference Architecture and components specification	Refusal (commercial interest)	OK to redact know-how on methodologies, strategies and technicalities for project's needs, such as technical requirements for the technologies developed in the project. This results in information relating to the global architecture of the project, including materials and software for the final, integrated system. However, the document recalled the general information based on public sources and summarized from D 2.1 and 2.3.
D 2.3 EU wide legal and ethical review report	Refusal (commercial interest)	Academic research analysis under EU and national law of the technologies involved. Ok to redact parts concerning the project's technological components and methodologies – and thus its strategy – following the regulatory framework. However, just as D 1.1 and 1.2 (see above), this intellectual work also consists in data gathered from public available information, of which REA did not prove the added value and that cannot, consequently justify the application of article 4(2).
D 3.1 Data Collection Devices – specifications	Partial access (commercial interest)	The document describes in detail the technologies involved in the project - such as biometric sensors - in relation with data gathering devices. However, the mere existence of <u>technical information</u> in this document does not automatically justifies the need to protect commercial interests of the consortium. In fact, some of this information is based on publicly available sources – for instance, technologies available on the market and potentially useful for the project. On the other hand, recommendations on which of them would be effective for the needs of the project do fall under article 4(2) as they combine public information with the expertise and evaluation criteria of the members of the consortium.
D 7.3 Dissemination and communication plan	Partial access (commercial interest)	Ok to redact communication strategy towards business partners in view of future collaborations. Not ok to redact information related to promotional and informative activities of the project to other parties (REA only argues that competitors could promote their products to the same parties involved).

D 7.6 Yearly communication report including communication material	Public document	
D 7.8 Dissemination and communication plan 2	Partial access (commercial interest)	Ok to redact communication strategy for future collaboration with commercial partners Not ok to redact information related to promotional and informative activities of the project
D 8.1 Quality Management Plan	Refusal (commercial interest)	Ok to refuse, as it contains info related to quality management, distribution of responsibilities, methodology, procedures for evaluating the performance keys, risk management. Commercial interests' exception duly applied.
D 8.3 Periodic Progress Report	Refusal (commercial interest)	Ok to refuse, as the reports contain information related to the stage of advancement of the project, technical results, use of resources per partners unveiling the technical know-how of the members of consortium that present commercial value. Exception of commercial interests correctly applied.
D 8.4 Annual Report	Refusal (commercial interest)	Ok to refuse, as the reports contain information related to the stage of advancement of the project, technical results, use of resources per partners unveiling the technical know-how of the members of consortium that present commercial value. Exception of commercial interests correctly applied.
D 8.5 Periodic Progress Report 2	Refusal (commercial interest)	Ok to refuse, as the reports contain information related to the stage of advancement of the project, technical results, use of resources per partners unveiling the technical know-how of the members of consortium that present commercial value. Exception of commercial interests correctly applied.
D 8.7 Annual Report 2	Refusal (commercial interest)	Ok to refuse, as the reports contain information related to the stage of advancement of the project, technical results, use of resources per partners unveiling the technical know-how of the members of consortium that present commercial value. Exception of commercial interests correctly applied.