

GUIDELINES ON PUBLIC ACCESS TO R&I PROGRAMMES DOCUMENTS

(VERSION 0.4)

Table of Contents

1. INTRODUCTION.....	2
2. DISTINCTION BETWEEN ACCESS TO DOCUMENTS, ACCESS TO FILE, ACCESS TO INFORMATION AND ACCESS TO PERSONAL DATA.....	3
3. PRIVILEGED ACCESS TO INFORMATION UNDER THE R&I PROGRAMMES.....	4
4. EXCEPTIONS TO THE RIGHT OF ACCESS POTENTIALLY APPLICABLE TO THE R&I PROGRAMMES DOCUMENTS (ARTICLE 4 OF REGULATION 1049/2001).....	6
4.1. THE EXCEPTION OF ‘PRIVACY AND THE INTEGRITY OF THE INDIVIDUAL’	6
4.2. THE EXCEPTION OF ‘COMMERCIAL INTERESTS’	9
4.3. THE EXCEPTION OF ‘DECISION-MAKING PROCESS’	11
5. THE LIST OF THE FP7 AND HORIZON 2020 DOCUMENTS	13
5.1. GENERAL FP7 AND HORIZON 2020 DOCUMENTS	13
5.2. WORK PROGRAMME / JU WORK PLAN AND FUNDING OPPORTUNITIES	14
5.3. EXPERTS	15
5.4. APPLYING FOR FUNDING	16
5.5. EVALUATION	18
5.6. AWARD OF GRANTS AND GRANT PREPARATION.....	19
5.7. GRANT MANAGEMENT.....	20
5.8. REVIEWS AND AUDITS	22
5.9. CONTRACTUAL MEASURES AND SANCTIONS.....	23
5.10. MEANS OF REDRESS	24

1. INTRODUCTION

The Commission Decision C(2013) 8751¹ lays down one of the tasks of the Common legal support service (CLSS) to *"ensure a common approach to requests for access to documents [...] for Horizon 2020 by providing legal advice if requested by the research DGs, Executive Agencies or Joint Undertakings"*.

The Common Support Centre Executive Committee (CSCEC) endorsed the *Working arrangements in the Research family as regards Access to documents*² on 21 January 2016.

In line with these AtD working arrangements, the CLSS drafted a guidance document on public disclosure of documents under Horizon 2020 (H2020) and FP7 legacy, with input from the Research family and the Secretariat-General. The CSCEC endorsed the updated guidelines on 22 November 2018.

On 24 June 2019 the Secretariat-General and DG BUDG updated their [*Guidance note on access to information and documents related to procurement and grants*](#) (hereinafter: 'SG/BUDG guidance'), initially released on 22 June 2016. The present guidelines apply the same definitions as the SG/BUDG guidance and are complementary to it. While handling requests for access to documents, the members of the Research family should adhere as much as possible to both documents.

At the same time, the access to documents legal coordinators of the Research family should observe the General Court case-law stating that *"an assessment of documents by reference to categories rather than on the basis of the actual information contained in those documents [is] insufficient, since the examination required of an institution must enable it to assess specifically whether an exception invoked actually applies to all the information contained in those documents."*³ Consequently, every requested document has to be examined thoroughly.

For the purpose of these guidelines, the definitions of the R&I programmes legal acts complement the definitions of the SG/BUDG guidance.

¹ Commission Decision C(2013) 8751 on the operating rules for the Common Support Centre for Horizon 2020, the Framework Programme for Research and Innovation (2014-2020), Article 8(i).

² Note on common approach to requests for access to documents concerning Horizon 2020 (Working arrangements in the Research family), hereinafter referred to as the 'AtD working arrangements'.

³ Judgment of the Court of first Instance of 30 January 2008 in [case T-380/04, Ioannis Terezakis v Commission](#) (para 87).

2. DISTINCTION BETWEEN ACCESS TO DOCUMENTS, ACCESS TO FILE, ACCESS TO INFORMATION AND ACCESS TO PERSONAL DATA

2.1 Access to documents

Access to documents requests are governed by Regulation 1049/2001⁴. Art 2 of this Regulation and Art 1 of the [Detailed rules for the application of Regulation 1049/2001](#) define the beneficiaries, namely the legal and/or natural persons that have the right to introduce an access to documents request.

The deadline for replying to initial requests is 15 working days, with the possibility of extension with another 15 working days.

In order to determine whether the requested document(s) can be disclosed (partially or in full), an analysis on a case-by-case basis against the exceptions set out in Art 4 of the Regulation has to be performed.

For the Commission, appeals are to be sent to the Transparency, Document Management & Access to Documents unit (C.1) of the Secretariat General. For the Executive Agencies (EAs) and the Joint Undertakings (JUs), their internal procedures in this respect have to be observed.

Whenever personal data is concerned, the provisions of Regulation 2018/1725⁵ become fully applicable⁶.

2.2 Access to file

Under Art 41(2)(b) of the [Charter of fundamental rights of the European Union](#), the right to good administration includes "*the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy*".

The right of access to file enables the person concerned (prior to any final decision in their case) to receive the evidence in the EU authority's file so that, on the basis of that evidence, the person can express their views effectively on the conclusions reached by the authority. The concerned person must be granted access to all non-confidential documents concerning the contested decision, if they so request. The provisions of Art 41(2)(b) of the Charter refer to both legal and natural persons.

The correct classification and treatment of the above-mentioned requests lie with the concerned institution or body. Whenever the applicant did not invoke the correct legal

⁴ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, Official Journal L 145 of 31.5.2001, p. 43.

⁵ Regulation (EU) 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) No 45/2001 and Decision No 1247/2002/EC ([OJ L 295, 21.11.2018, p. 39](#)).

⁶ Judgment of the Court of Justice of 29 June 2010 in Case C-28/08 P, [European Commission v The Bavarian Lager Co. Ltd.](#), EU:C:2010:378, para 59.

basis, the concerned institution or body should send them an explanation, reclassifying the request under the correct legal basis.

2.3 Access to information

Information is any news, knowledge or data not necessarily available in written, visual, oral, electronic or any other form. Typically, requests for information refer to a number of questions, which can be only replied from a compilation of information from several documents or sources.

In accordance with the [*Code of good administrative behaviour*](#), a member of the public who writes to the Commission shall receive a reply in the language of their initial letter, provided that it was written in one of the official languages of the European Union. A reply to a letter addressed to the Commission shall be sent within 15 working days from the date of receipt of the letter by the responsible department. If this deadline cannot be met, a holding reply must be sent to the applicant. The request for information does not establish a right of access to document(s). For the Commission, appeals are to be sent to the Ethics, Good Administration & Relations with the European Ombudsman unit (C.2) of the Secretariat General. For the Agencies and the JUs, their internal procedures in this respect have to be observed.

2.4 Access to personal data

The right of access to personal data is set out in Art 17 of Regulation 2018/1725. Only the data subjects themselves can benefit from this right. Consequently, only the data subject can submit a request for access to their own personal data. The controller shall provide a response without undue delay and in any event within 1 month of receipt of the request. This period may be extended by 2 further months where necessary. Appeals against the replies are to be submitted to the European Data Protection Supervisor (EDPS).

3. PRIVILEGED ACCESS TO INFORMATION UNDER THE R&I PROGRAMMES

This part of the guidelines concerns the access of certain categories of natural and legal persons to specific information regarding the management of the R&I framework programmes. This information is not intended to be disclosed to the general public.

3.1 Privileged access under the H2020 Specific Programme

In line with Articles 9 and 10 and Annex IV of the [*H2020 Specific Programme Decision*](#)⁷, the Programme Committee members (as the representatives of Member States (MSs) and Associated Countries (ACs)) have privileged access to certain kinds of documents (MSs under the principle of sincere cooperation (Article 4(3))⁸ of TEU) while

⁷ Council Decision N° 2013/743/EU of 3 December 2013 establishing the specific programme implementing Horizon 2020 - the Framework Programme for Research and Innovation (2014-2020) and repealing Decisions 2006/971/EC, 2006/972/EC, 2006/973/EC, 2006/974/EC and 2006/975/EC (OJ L 347, 20.12.2013, p. 965–1041)

⁸ Article 4(3) of TEU stipulates that "[p]ursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the Treaties".

ACs under the H2020 Association Agreements). These documents contain (1) information on individual projects, enabling the monitoring of the entire lifetime of each proposal, (2) information on the outcome of each call and project implementation, (3) information on H2020 programme implementation and (4) information on the execution of the H2020 budget.

The Programme Committee members can be given access to the types of information listed in Annex IV of the *H2020 Specific Programme Decision*, provided that they are needed for the performance of their tasks as defined in Article 9(2) and Annex IV of the *H2020 Specific Programme Decision*. The transfer of the personal data of the staff of applicants/beneficiaries to the Programme Committee members can be based on Art 9 of Regulation 2018/1725.

The Programme Committee members are required to adhere to the *Rules of procedure for the Programme Committee for the specific programme implementing H2020 – The framework programme for research and innovation (2014-2020)* and the *Confidentiality rules for framework programme data stored in CORDA and eCORDA* (i.a. respect the confidentiality obligations and data protection rules).

3.2 Privileged access to the Expert Management Internal (EMI) database

The members of the Research family have access to the EMI database containing the personal data of independent experts who are used for the evaluation and monitoring of H2020 actions and programmes. Under the principle of sincere cooperation among the EU institutions⁹, other Commission's DGs, EU institutions and bodies may obtain privileged access to the EMI database for the management of their own programmes, on condition that the experts concerned have given their prior agreement¹⁰. The use of the EMI database by other Commission's DGs, EU institutions and bodies is in the public interest and fits the principle of sound financial management of EU funds because it helps avoid spending unnecessary money on the creation of clone databases of experts.

Under the principle of sincere cooperation between the EU institutions and EU Member States (and in line with the provisions of the H2020 Association Agreements), the Commission may authorise access to the EMI database to the public research funding bodies with a public service mission in a Member State or an H2020 Associated Country, on condition that the experts concerned have given their prior agreement. Decisions on access are made by the Director-General of DG RTD (or by his representative(s))¹¹.

⁹ Article 13(2) of TEU stipulates that "[e]ach institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. The institutions shall practice mutual sincere cooperation".

¹⁰ When experts register themselves, they have to agree with the [Data Privacy Statements](#) from the Funding & tender opportunities portal. The DPN on Registration, Selection and Management of External Experts states that "Unless you opt out (unticking the corresponding box), by default, your profile will be visible and accessible by all funding programmes of the EU Institutions, bodies and agencies."

¹¹ See the [Call for the establishment of the Horizon 2020 database of experts](#) and the H2020 Vademecum: [Section 2 – Experts](#).

4. EXCEPTIONS TO THE RIGHT OF ACCESS POTENTIALLY APPLICABLE TO THE R&I PROGRAMMES DOCUMENTS (ART 4 OF REGULATION 1049/2001)

The Court of Justice of the EU ruled that: "*in order to justify refusal of access to a document the disclosure of which has been requested, it is not sufficient, in principle, for that document to fall within an activity mentioned in Article 4[...] of Regulation No 1049/2001. The institution concerned must also supply explanations as to how access to that document could specifically and effectively undermine the interest protected by an exception laid down in that article*¹²". The identified risk must be reasonably foreseeable and not purely hypothetical. Only if such risk exists can the relevant exception(s) of Article 4 of *Regulation 1049/2001* be invoked and access to the document(s) requested be partially or fully denied.

The exceptions to the right of access that can potentially be considered for the R&I documents, or parts thereof, are listed below. Depending on the specific circumstances of each case, other exceptions can potentially also apply. In all cases where no general presumption of non-disclosure applies¹³, a concrete assessment of the documents falling within the scope of a specific request must be carried out.

Meaningless partial access

In certain cases, the examination of the document requested might show that only a very small part of its content, dispersed throughout the document, is not protected by any exception provided in Article 4 of *Regulation 1049/2001*. Consequently, the provision of a heavily redacted document, in which the non-sensitive information is dispersed and, thus, provided in a non-transparent manner, might not be of any value to the applicant.

It clearly follows from the EU Court of Justice case-law that "*in cases where examination of the documents in question shows that partial access would be meaningless because the parts of the documents that could be disclosed would be of no use to the applicant*" the institutions are "*entitled to refuse partial access*"¹⁴. Nevertheless, if some information from the requested document is available online, the applicant should be provided with the links to such information (e.g. to the CORDIS portal containing the publishable information about R&I projects). In case the concerned documents are already published by an official source (an EU institution, body or agency or a public authority of a Member State), the link(s) to the documents can be provided to the applicant, unless there would be manifest reasons to believe that the publication of those documents was not lawful.

4.1. THE EXCEPTION OF 'PRIVACY AND THE INTEGRITY OF THE INDIVIDUAL'

In line with Article 4(1)(b) of *Regulation 1049/2001*, the institutions shall refuse access to a document where disclosure would undermine "*the protection of privacy*

¹² Judgment of the Court of Justice of 29 June 2010 in [case C-139/07, Commission v Technische Glaswerke Ilmenau GmbH](#) (para 53).

¹³ Judgment of the General Court of 26 May 2016 in case [T110/15](#), IMG v Commission, paras 29-37

¹⁴ See judgment of the Court of first Instance in [case T-204/99, Mattila v Council and Commission](#) (para 69).

and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data".

Whenever a request based on *Regulation 1049/2001* seeks to obtain access to personal data in the documents held by the DG/EA/JU, the provisions of *Regulation 2018/1725* are fully applicable.

Pursuant to Article 9(1) of Regulation (EU) 2018/1725, *"personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if:*

- (a) the recipient establishes that the data are necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the recipient; or*
- (b) the 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 Art 5 of Regulation 2018/1725, can the transmission of personal data occur.

Personal data may only be transferred to an applicant for access to documents with an address in an EU/EEA country if the conditions of Art 9 of Regulation 2018/1725 are complied with. Personal data may only be transferred to an applicant for access to documents with an address in a third country if the conditions of Chapter V of Regulation 2018/1725 are complied with.

An FP7 or H2020 document may contain the personal data of the following individuals (the list is non-exhaustive):

- a) Staff of grant applicants/beneficiaries and other third party individuals connected with grant applications/agreements (personal data: names, contact data, CVs, professional and personal background, signatures, etc.),
- b) Members of the Commission expert groups and the independent experts evaluating the proposals and/or programmes, observing the call implementation or reviewing the ongoing projects and/or programmes (personal data: names, contact data, CVs, declarations of interests, opinions, etc.),
- c) External auditors (personal data: names, contact data, opinions, etc.),
- d) Staff of the Commission, Executive Agencies and Joint Undertakings involved in the grant award/management process (personal data: names, contact data, functions, opinions, etc.).

As regards the redaction of the personal data in the documents requested, the [instructions of the Secretariat General](#) have to be adhered to.

POSSIBLE LEGAL ARGUMENTS

a) The names of authors

The names of the individuals in their capacity as authors of the document requested, or of reference documents listed in the reference section of the document requested, can be made public, if it is clear that the authors have exercised their right to claim authorship and be identified as authors (e.g. their names in their capacity as authors of the document requested and/or authors of the references cited therein are publicly accessible online and have been made public by a trustworthy source).

It could be considered that the authors (the data subjects), whose names are publicly accessible online and have been made public by a trustworthy source, have provided their consent in a way which leaves no doubt that they agree to the disclosure of their personal data (i.e. their names) in their capacity as authors of the documents they produced (Art 5(d) of Regulation 2018/1725).

b) Personal data of the members of the Commission expert groups and the independent experts

As regards the Commission expert groups, the Commission is under obligation¹⁵ to publish the names and declarations of interests of experts as described in Commission Decision [C\(2016\) 3301](#). In principle, in conformity with this Commission Decision, the submissions of all members of the Commission expert groups also have to be published.

As regards the individual FP7 independent experts, the Commission was under obligation¹⁶ to publish once a year in any appropriate medium the list of the independent experts that have assisted it for the FP7 and each specific programme.

As regards the individual H2020 independent experts, the Commission is under the obligation¹⁷ to publish on its website the names of the experts appointed in a personal capacity, who have assisted the Commission in the implementation of H2020. The Commission has to publish their names together with their area of expertise at least once a year on the internet site of the Commission.

Whereas the Commission is obliged to publish the names of the independent experts per their area of expertise, there is no obligation to publish their names using other criteria (e.g. publication per call or call topic). In certain cases, the publication of the names of experts could, namely, undermine the protection of their privacy and integrity. Recital 31 of the *H2020 Rules for participation* indicates that where the publication of the name would endanger the security or integrity of the expert or

¹⁵ Articles 11, 23 and 26 of Commission Decision [C\(2016\) 3301](#) of 30.5.2016 establishing horizontal rules on the creation and operation of Commission expert groups.

¹⁶ As required in Article 17(5) of the [FP7 Rules for participation](#).

¹⁷ As required in Article 40.5 of the [H2020 Rules for participation](#).

would unduly prejudice his or her privacy, the Commission or funding bodies should be able to refrain from the publication of such names. It should be noted, however, that the arguments for the protection of privacy and the integrity of the experts cannot be considerations of a general nature, but must be supported by factors, specific to the respective case¹⁸.

In view of this, the names of the independent experts can, in principle, not be disclosed per topic and closing date of a call, because such disclosure could undermine the protection of their privacy or their integrity for the following reasons.

First of all, the number of expert evaluators per topic and closing date of a call is significantly lower than the number of expert evaluators per area of expertise. The disclosure of their names per topic and closing date of a call could expose them to potential direct or indirect pressures by unsuccessful grant applicants. The latter could, namely, expose these expert evaluators to unjustified outside criticism (e.g. on social media) which could, in turn, seriously undermine their reputation. Furthermore, should the names of expert evaluators be disclosed per topic and closing date of a call, the unsuccessful grant applicants could also try to influence or pressure the experts to evaluate the future proposals of certain grant applicants in a more or less favourable manner.

Second of all, the reports and opinions given by the expert evaluators are of a collective nature. It is the panel of experts as a whole that is accountable for the content of any reports or opinions it issues and not the individual experts, who are bound by the obligation of professional secrecy. In view of their obligation to observe the confidentiality of the panel's proceedings, they would not be able to defend themselves against unjustified outside criticism as they would not be able to reveal what their individual views were on the report and opinion in question.

4.2. THE EXCEPTION OF 'COMMERCIAL INTERESTS'

In line with Art 4(2), first indent, of Regulation 1049/2001, the institutions shall refuse access to a document where disclosure would undermine *"the protection of commercial interests of a natural or legal person, including intellectual property"*.

An FP7 or H2020 document may contain the following commercially sensitive information about grant applicants/beneficiaries (the list is non-exhaustive):

- a) Commercial data: names of the grant applicant/beneficiary's business partners, commercial strategies, commercial plans, marketing techniques, etc.,
- b) Financial data: bank account numbers, financial resources, budget, payments, financial remuneration of staff, etc.,
- c) Administrative data: internal organisation, budget allocations within a consortium, specific e-mail addresses of contracting parties, etc.,

¹⁸ See judgment of the Court of Justice in [case C-615/13 P, *ClientEarth v EFSA*](#), para 69.

- d) Human resources data: staff names and assignments, HR methodologies, employment strategies, etc.,
- e) Data concerning the intellectual property, know-how, ongoing research, methodologies, techniques and strategies of the grant applicant/beneficiary as well as of its business partners.

POSSIBLE LEGAL ARGUMENTS

The following legal arguments could be considered, whenever the disclosure of the (parts of) documents could undermine the commercial interests of grant applicants/beneficiaries.

A grant application contains information relating to methodologies, know-how, specific pricing or business strategies as to how the project will be implemented. The protection of a grant application does not cease with the award of the grant, but extends, in principle, even after its conclusion.

As regards the release of the commercially sensitive information into the public domain, it might give the competitors of the grant applicant/beneficiary an unfair advantage, as the former would be able to use this sensitive commercial information in their favour. They could, namely, anticipate the grant applicant/beneficiary's strategies and weaknesses, including when competing in calls for proposals.

However, the negative effects liable to follow upon the disclosure of commercially sensitive information become less significant the older the information in question is.¹⁹

The exception relating to commercial interests can, in principle, be applied to non-commercial entities, such as non-profit associations or even public entities applying for a grant. The General Court accepted this exception for a university²⁰ and clarified that both a public company and a private company fulfilling tasks in the public interest can have commercial interests.²¹

In some cases, the public disclosure of the grant applicant/beneficiary's legal name in the requested document or elements identifying it might undermine the grant applicant/beneficiary's reputation, as it might expose the grant applicant/beneficiary to unjustified outside criticism (e.g. when the documents requested are audit reports). As a consequence, such disclosure might undermine the existing and future commercial relations of the grant applicant/beneficiary.

In most cases, the disclosure of the information about the grant applicant/beneficiary's business partners (which are not the grant applicants/beneficiaries) might undermine the

¹⁹ Judgment of the General Court of 22 May 2012 in Case T-344/08, [EnBW Energie Baden-Württemberg AG v European Commission](#), EU:T:2012:242, para 139.

²⁰ Judgment of the General Court of 21 October 2010 in Case T-439/98, [Kalliope Agapiou Joséphidès v European Commission and Education, Audiovisual and Culture Executive Agency \(EACEA\)](#), EU:T:2010:442, paras 127-128.

²¹ Judgment of the General Court of 5 December 2018 in Case T-857/16, [Falcon Technologies International LLC v European Commission](#), EU:T:2018:877, paras 48-49.

grant applicant/beneficiary's business relations with said partners, i.e. the relations which depend to a large extent on the existence of a climate of mutual trust that the business secrets of partners are protected. In addition, the disclosure of the names of its partners could undermine the grant applicant/beneficiary's ability to keep its partner network intact and/or leverage its partners. Grant applicants/beneficiaries usually spend years building relationships with their business partners and given the highly specialized nature of grant applicants/beneficiaries performing top research, the network of their business partners can be one of the key competitive advantages of the grant applicants/beneficiaries.

Finally, the disclosure of the names and contact information of the grant applicant/beneficiary's staff (whose personal data are not published on CORDIS) could cause the applicant/beneficiary significant financial harm, as in research-focused business, the staff of the grant applicant/beneficiary can be its key asset. The staff working on research projects are usually highly-trained experts in their respective fields and the release of their names and contact information could enable the competitors of the grant applicant/beneficiary to head-hunt its employees or otherwise harm the grant applicant/beneficiary's prospects for developing future business opportunities.

As regards commercial interests in relation to intellectual property, the General Court has clarified that the mere compilation of already publicly available information does not benefit from the protection of Art 4(2), third indent of Regulation No 1049/2001²², as such a compilation does not suffice to show that all those data reveal the content of the applicant's strategic know-how and are thus confidential. On the contrary, such information could only be protected in case the assembly of data reflected an inventive strategy and provided added value.

4.3. THE EXCEPTION OF 'DECISION-MAKING PROCESS'

In line with Article 4(3), first paragraph, of *Regulation 1049/2001*, access to a *"document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure"*.

In line with Article 4(3), second paragraph, of *Regulation 1049/2001*, access to a *"document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure"*.

The grant award and management is a complex process wherein various documents are drawn up or received by the DGs/EAs/JUs for internal use. An FP7 or H2020 document may contain the opinions of the Programme Committee members (i.e. positions of Member States and Associated Countries), independent experts (e.g. in individual evaluation reports), panel members (e.g. in panel reports), etc. Whereas, in principle, these documents may not be disclosed until the decision-making process is finished,

²² Judgment of the General Court of 5 February 2018 in Case T-235/15, [Pari Pharma GmbH v European Medicines Agency](#), EU:T:2018:65, para 76.

there is less need for (and a more limited scope of the) protection once the decision-making process has finished and the grant agreements have been signed.

This exception should be used cautiously, as an accessory ground for refusal (in combination with other exceptions). If invoked, it has to be shown how access to the requested documents must be likely to **concretely** and **effectively** bring serious harm to the decision-making process in a **foreseeable** and **non-hypothetical** way²³.

POSSIBLE LEGAL ARGUMENTS

The following arguments could be considered, whenever the disclosure of the (parts of) documents could undermine the decision-making process.

The names and opinions of the independent expert evaluators

During the Framework Programme's lifetime, the expert evaluators can take part in the evaluation of the proposals submitted under several calls. Exposing the expert evaluators to external pressures can imperil their independence and bias their judgement for fear of pressures from unsuccessful grant applicants, in particular, but not only, in cases where they have to deal with the same grant applicants in future calls. This can impact the quality of their evaluation of proposals submitted in ongoing and future calls and, in turn, seriously affect the decision-making process.

It is very important that the expert evaluators remain in a position where they can evaluate completely independently the proposals submitted by the grant applicants. In order not to jeopardise the independent character of the evaluation process, the evaluators have to be safe from all sources of influence exerted by public or private interests which would attempt to compel them to decide in favour of or against a certain proposal.

The names and opinions of the panel members

The opinions of the panel members are intended for internal use as part of deliberations and preliminary consultations within the Commission in a decision-making process concerning the award of grants.

Panel consultations form an integral part of the decision-making process concerning the award of grants and their confidentiality is essential. Public disclosure of the opinions of the panel members even after the decision-making process has finished, could curtail the future panel members' "space to think" and might lead to their self-censorship. In turn, the Commission would no longer be able to explore all possible options free from external pressure. Consequently, this would prejudice the Commission's margin of manoeuvre and, thus, undermine the integrity of the decision-making process of the Commission concerning the award of grants.

²³ Judgment of the Court of First Instance of 11 March 2009 in case T-121/05, [Borax Europe v Commission](#), EU:T:2009:64, paras 71-72; Judgment of the General Court of 7 June 2011 in case T-471/08, [Toland v Parliament](#), EU:T:2011:252

5. THE LIST OF THE FP7 AND HORIZON 2020 DOCUMENTS

The below list of FP7 and H2020 documents indicates the types of potentially requested documents, the proposed administrative practice concerning their potential (non)disclosure and the proposed timing.

The administrative practice proposed for the H2020 documents should be used by analogy for the FP7 documents. The references to grant applicants, proposals and beneficiaries should be construed to cover also the prize applicants, applications and winners.

The proposed practices listed below can help the services in their analysis. It is imperative to carry out a concrete assessment of the document(s) on a case-by-case basis by reference to these present CLSS AtD Guidelines. Reading the table is not sufficient in order to assess if a document should or should not be disclosed.

5.1. GENERAL FP7 AND HORIZON 2020 DOCUMENTS

Documents, publicly available on the EUROPA portal:

- [FP7 and H2020 Reference documents](#),
- [Funding & tender opportunities Legal Notice](#) (including the relevant (updated) Privacy Statements),
- [H2020 Online Manual](#),
- [EU R&I programmes evaluation, impact assessment and monitoring documents](#),
- [Statistics on EU funded projects under FP7 and H2020](#) (EU Open Data Portal),
- [CORDIS](#), EU research results,
- List of meetings of the [European Commissioner](#) for Innovation, Research, Culture, Education and Youth and her [Cabinet](#) with organisations and self-employed individuals,
- Lists of meetings of Directors-General with organisations and self-employed individuals (available on the public webpages of the respective Directorates-General – e.g. [RTD](#)).

The table below is not exhaustive, but it covers most of the types of documents in Horizon 2020. For certain types of documents there is not yet a recommended practice and timing because there have been no concrete cases handled by the Research family. Therefore, the table will be subject to periodic updates according to the development of new practices in the Research family and in the Commission in general.

For some types of documents full access can be given to the templates of the documents once they are published on GoFund and/or the Funding & tender opportunities (FTO)

Portal. However, as regards the specific content of the documents themselves, it should be assessed on a case-by-case basis considering possible applicable exceptions.

Document requested	Usual administrative practice	Timing
Guidelines and templates		
Vademecum	Full access	Upon publication on GoFund
Internal guidelines	a) Full access b) Partial access : see section 5.8 for audit guidelines	Upon publication on intranet
Forms and templates	Full access	Upon publication on FTO or GoFund
Executive Agencies' Steering Committee Minutes		
Minutes of meetings of the Steering committee of EAs	Partial access : public interest (public security), privacy & integrity , commercial interests and/or purpose of inspections, investigations and audits	Upon adoption
Association Agreements		
Lists of FP7 and H2020 Associated Countries	Full access	Published (FP7 , H2020)
Association Agreements	Partial access : public interest (international relations) and/or privacy & integrity exceptions	Upon signature by parties GestDem 2015/5226 GestDem 2017/1861
Minutes of EU and third country science and technology Steering committee	Partial access : public interest (international relations) and/or privacy & integrity exceptions Third country consultation mandatory	GestDem 2018/2159 GestDem 2020/1733

5.2. WORK PROGRAMME / JU WORK PLAN AND FUNDING OPPORTUNITIES

Document requested	Usual administrative practice	Timing
Work Programme / JU Work Plan		
Strategic programming documents		
JU Delegation Agreement	Full access	Upon conclusion
Results of public consultation	Full access (information published)	Upon publication
Programme Committee (PC) information and opinion letters	Full access : templates	Upon publication on GoFund
JU's PC opinion / Opinion of the JU States Representatives Group	Partial access : privacy & integrity and commercial interests exceptions	

Inter-service consultation opinions		GestDem 2020/3314
Work Programme	Full access	As soon as adopted GestDem 2019/1219
Work Plan of the JU	Full access	As soon as adopted by the JU Governing Board
Calls for proposals		
Call for proposals and accompanying documents	Full access	Upon publication on FTO or once made available to the grant applicants
Additional information during the procedure	Full access	Upon publication on FTO or once made available to the grant applicants
Calls for prizes		
Contests of prizes	Full access	Upon publication on FTO
Contests of prizes file	Full access	Upon publication on FTO or once it is made available to the prize applicants
Additional information during the procedure	Full access	Upon publication on FTO or once it is made available to the prize applicants

5.3. EXPERTS

Document requested	Usual administrative practice	Timing
General documents		
Call for experts	Full access	Upon publication (H2020 2013 Call available)
FP7 Expert appointment letter	Partial access: privacy & integrity exception	After it has been sent to the expert GestDem 2015/4622
H2020 Experts Model contract	Full access	Upon publication GestDem 2016/2453 GestDem 2017/2579
H2020 Letter of Appointment for ERC remote referees	Full access: template	Upon publication
Declarations of the experts on the absence of conflict of interest	a) Full access: templates b) Partial access: signed declarations (privacy & integrity and/or decision-making exceptions)	a) Upon publication on GoFund
List of Experts per specific programme/objective (area of expertise)	Full access	Upon publication (Art 17.5 FP7 RfP and Art. 40.5 H2020 RfP) GestDem 2018/2211 GestDem 2019/3385
Call/project specific documents		

List of Experts per call (topic, closing date, nationality, entity etc.)	No access: privacy & integrity and/or decision-making exceptions	GestDem 2016/2386
Attendance list		

5.4. APPLYING FOR FUNDING

Document requested	Usual administrative practice	Timing
Registration of grant applicants		
LEAR appointment letter	Full access: template	Upon publication
Standard LEAR roles and duties	Full access	Upon publication
Submission of grant applications		
Submission forms and templates	Full access	Upon publication
Grant applications	<p>Secretariat-General:</p> <p>No access: based on a general presumption of non-disclosure (protection of commercial interests and privacy), even after finalisation of the grant award procedure (the general presumption of non-disclosure of a bid confirmed by the General Court should apply, per analogy, also to submitted grant applications).</p> <p>CLSS:</p> <p>After concrete assessment of the requested documents, partial access under certain conditions (i.e: special type of action, date of the project) and compulsory third party consultation</p>	<p>GestDem 2014/0712</p> <p>GestDem 2016/5518</p> <p>GestDem 2017/5394, GestDem 2019/6378</p>

List of legal entities and applications from a certain country/region	<p>a) successful applications: number, acronym, title, abstract and duration of the project, maximum EU contribution, names of the legal entities in the consortium and EU contribution per legal entity may be disclosed (all information available on Cordis)</p> <p>b) unsuccessful applications: number and title of unsuccessful applications may be disclosed, but not the acronym, the names of legal entities and reasons for rejection (exception of Art 4(2), first indent);</p> <p>c) ongoing applications (the Grant Award decision has not been taken yet): no disclosure (Art 4(3), first paragraph).</p>	
Security Aspect Letter, Security Classification Guide and Facility Security Clearances		
Admissibility and eligibility check		
RAO rejection decision	Full access: template	Upon publication on GoFund
Proposal rejection letter	Full access: template	Upon publication on GoFund
Grant applicant rejection letter	Full access: template	Upon publication on GoFund
Document on evaluation methodology, where applicable	<p>Accessible immediately</p> <p>Accessible after taking the award/rejection decision on concerned applications</p>	<p>If published with the call for proposals</p> <p>If not published with the call for proposals</p>
Clarifications requested from applicants during evaluation and their replies	Partially accessible: except for information covered by the commercial interests and personal data (protection of commercial interests and privacy)	After signature of grant agreement or after cancellation of the procedure
Report on admissibility and	Partial access: privacy & integrity and commercial interests exceptions	

eligibility		
-------------	--	--

5.5. EVALUATION

Document requested	Usual administrative practice	Timing
Evaluation of grant applications		
Evaluation rules (General Annex (H) to the H2020 WP and the relevant WP part (call conditions))	Full access	Upon adoption of the H2020 WP
JU's rules for submission, evaluation, selection, award and review procedures of call for proposals	Full access	Upon adoption
Report of 'security scrutiny committee'		
Appointment of evaluation committees decision	No access: privacy & integrity, and/or decision-making exceptions	GestDem 2016/6546
Individual evaluation report	a) Full access: template (self-evaluation form) b) No access: privacy & integrity, commercial interests and/or decision-making exceptions	a) Upon publication on FTO b) GestDem 2014/2732 GestDem 2019/4646
Consensus report	Partial access: privacy & integrity, commercial interests and/or decision-making exceptions	Upon signature of relevant GAs or after cancellation of the procedure GestDem 2019/0707
Report of panel review with annexes (e.g. panel ranked list)	Partial access: privacy & integrity, commercial interests and/or decision-making exceptions	Upon signature of relevant GAs or after cancellation of the procedure
Evaluation Summary Report	Partial access: privacy & integrity and/or commercial interests exceptions	Upon signature of relevant GAs or after cancellation of the procedure
Ethics summary report and Security scrutiny summary report		
FP7 Ethics review report	Partial access: privacy & integrity and commercial interests exceptions	GestDem 2013/273
Call evaluation report / Governing Board decision approving the ranking list of the selected proposals with annexes (call ranked list, lists of unsuccessful	Partial access: commercial interests and/or decision-making exception	Upon signature of relevant GAs: List of proposals, retained for funding, may be fully disclosed. Only the number and title of the unsuccessful proposals may be disclosed.

proposals, statistics etc.)		
Fiche de présentation et de contrôle de qualité	Partial access: privacy & integrity exception	When drawn up GestDem 2015/4622
Independent Observer report	a) Full access: if published online b) Partial access: privacy & integrity exception	a) Upon publication b) Upon receipt by DG/EA/JU GestDem 2015/6292
Evaluation result letter	Partial access: privacy & integrity and/or commercial interests exception	Upon signature of relevant GAs or after cancellation of the procedure
Letter on Ethics and/or Security requirements		
RAO decision on Call evaluation report	Full access: template	Upon publication on GoFund GestDem 2016/411

5.6. AWARD OF GRANTS AND GRANT PREPARATION

Document requested	Usual administrative practice	Timing
Award of Grants and Grant Preparation		
GAP invitation letter and Reserve list letter	Full access: templates	Upon publication on GoFund
PC information and opinion letters	Full access: templates	Upon publication on GoFund
RAO Rejection decision	Full access: template	Upon publication on GoFund
Proposal / grant applicant rejection letter	Full access: templates	Upon publication on GoFund
Rejected proposals	Partial access: privacy & integrity and/or commercial interests exception. Disclosed: (i) proposal title (ii) abstract (iii) call and topic (iv) requested funding	GestDem 2019/2176 GestDem 2019/4440
Ethics assessment/check	Partial access: privacy & integrity and/or commercial interests exception	GestDem 2019/4952 GestDem 2020/2756
FP7 negotiation letter to the beneficiaries	Partial access: privacy & integrity exception	GestDem 2013/273 GestDem 2015/4622
FP7 negotiation checklist and report	Partial access: privacy & integrity and/or commercial interests exception	GestDem 2013/273
Declaration of Honour	a) Full access: template b) No access: signed DoH (privacy &	a) Upon publication on FTO

	integrity and/or commercial interests exception)	
Letters on ethics & security requirements		
PC voting fiche	Full access	Upon publication in the Comitology register
Draft Grant award decision	Full access	Upon publication in the Comitology register
Grant preparation report		
RAO/COM Grant award decision	Full access	When relevant GAs have been signed GestDem 2015/1942 GestDem 2016/814 GestDem 2016/2232
Notification of Grant signature		
Grant applicant rejection letter	Partial access (protection of privacy and commercial interests exceptions)	As soon as letter is sent out
Grant agreement		
Model Grant Agreement (GA)	Full access	Upon adoption
GA preparation forms	Full access	Upon adoption
Annotated Model GA	Full access	Upon adoption
Signed GA and its annexes - core GA: - Annex 1 (DoW): - Annex 2 (Budget): - Annex 3 (Accession Forms): - Annex 4: Financial statements - Annex 5: Certificate on the financial statements - Annex 6: Certificate on the methodology	Partial access: privacy & integrity and commercial interests exceptions Annex 1 (DoW) can normally be withheld in its entirety, if access to the redacted document would be meaningless. Relevant links to CORDIS should be provided whenever GAs and/or other project documentation are requested. Partial Disclosure of annexes, except Annex 1 (DoW)	Upon signature of the GA. Consortium should be consulted regarding the disclosure GestDem 2015/987 GestDem 2018/5239
JRC Administrative Arrangement	Partial access: privacy & integrity and commercial interests exceptions	Upon signature of the Administrative Arrangement GestDem 2015/4622

5.7. GRANT MANAGEMENT

Document requested	Usual administrative practice	Timing
Financial guarantees	No access (commercial interests	

	exception)	
Correspondence		
Correspondence of PO and Coordinator	No access (decision-making process, commercial interests and privacy)	
Payment letters		
Project Documentation / Information		
Project details (EU contribution, partners, project description and objective etc.)	Full access	Upon publication on CORDIS and/or project webpage (if exists)
Results in brief	Full access	Upon publication on CORDIS
Report summaries	Full access	Upon publication on CORDIS
Deliverables	a) Full access to the publishable deliverables b) Partial access to the non-publishable deliverables (privacy & integrity and commercial interests exceptions) c) No access (NO agreement from the coordinator to disclose deliverables or Annex 1 -Description of Work)	a/b) Upon receipt of the deliverables by DG/EA/JU b) Consortium should be consulted regarding disclosure. Gestdem 2019/6378 c) No agreement from consortium GestDem 2020/0269
Technical report (periodic and final) (MGA Art. 20(3-4))	a) Full access : template and summary for publication b) Partial access : other parts of the report (privacy & integrity and commercial interests exceptions)	a) Upon publication by an official source b) Upon the receipt of the report by DG/EA/JU. Consortium should be consulted regarding disclosure. GestDem 2018/5978 GestDem 2019/0832 GestDem 2019/2379 (Periodic reports)
Financial report (periodic and final)	Full access : template	Upon publication
Intermediate financial reports, Forms C and Use of resources	Partial access (upon agreement of the <u>third-party</u>): privacy & integrity and commercial interests exceptions	GestDem 2016/6754 GestDem 2017/853 GestDem 2017/1692 GestDem 2017/6110 GestDem 2017/6113 GestDem 2019/6299
Peer-reviewed scientific publication relating to the results of the project (MGA Art. 29(2))	Full access	a) Upon publication (if electronic version is available for free via the publisher), or (b) Within 6 months of publication (12 months for social sciences and humanities)
Research data (MGA Art. 29(3)) –	Full access	Upon publication in a research data repository

Research Data Pilot)		
----------------------	--	--

5.8. REVIEWS AND AUDITS

Document requested	Usual administrative practice	Timing
Reviews		
Note proposing internal review + annexes (lists of experts, projects to be reviewed, statistics)	Partial access: privacy & integrity and commercial interests exceptions	When DG/EA/JU receives the review report GestDem 2015/4622
Interim and final review report	Partial access: privacy & integrity and commercial interests exceptions	When DG/EA/JU receives the document GestDem 2015/6341 GestDem 2019/3288 GestDem 2020/0386
Audits		
FP7 Audit Manual	Partial access: public interest (financial policy of EU) and the purpose of audits exceptions	GestDem 2012/2620 GestDem 2016/5018 GestDem 2020/1031
Ex-post audit strategy of FP7	Partial access: public interest (financial policy of EU) and the purpose of audits exceptions	GestDem 2012/4586
The FP7 Audit Process Handbook	Partial access: the purpose of audits exception	GestDem 2012/5831
Guidelines on the Implementation of Audit Results in FP7 (December 2011)	Full access	GestDem 2012/5831
Common Anti-Fraud Strategy in the Research Family	Full access	
FP7 Letter of Announcement and its annex	Full access: template	GestDem 2013/141
Internal documents of an audit case (notes to the file, internal correspondence)	Partial access: privacy & integrity and commercial interests exceptions	When the decision-making process is finished GestDem 2015/4516
Correspondence with the auditee	Partial access: privacy & integrity and commercial interests exceptions	When DG/EA/JU sends or receives the document. The auditee should be consulted regarding disclosure GestDem 2015/4516
Audit report	a) Full access: template b) No access: decision-making process (when the audit process is not	GestDem 2013/141 GestDem 2015/4516 GestDem 2016/5018

	finished) c) Partial access: privacy & integrity and commercial interests exceptions if the audit has been implemented	GestDem 2017/0735 GestDem 2017/6110 GestDem 2017/6113 GestDem 2018/1178 GestDem 2020/1030
Ethics Audit report		

5.9. CONTRACTUAL MEASURES AND SANCTIONS

Document requested	Usual administrative practice	Timing
Contractual measures (Model GA Chapter 6)		
Pre-information letter	No access (protection of commercial interests and privacy)	
Correspondence of the parties of the contradictory proceedings		
Decision imposing a contractual measure	Full access: if the Commission publishes the decision	Upon publication by the Commission
Confirmation of recovery, together with notification of the amounts due	No access (protection of commercial interests and privacy)	After the recovery order is sent out
Debit note		
Correspondence concerning the suspension of payment, payment deadline, or action implementation		
Correspondence concerning the termination of the GA or the termination of the participation of the beneficiary(ies)		
Regulatory measures (Financial Regulation)		
Administrative sanctions		
Decision imposing a sanction	Full access: if the Commission publishes the decision	Upon publication by the Commission
Commission decision based on Article 299 TFEU (enforced recovery)	Partial access if not detrimental to the commercial interests of the company concerned and no other exception applies. Data/parts of the recovery decision which are already lawfully in the public domain should not be protected.	GestDem 2018/1121 GestDem 2019/6682

Confirmation of the exclusion and/or financial penalty, together with notification of the duration (exclusion) and the amounts imposition (penalty)		
Debit note (financial penalties)		
Correspondence concerning the suspension of payment, payment deadline or action implementation		
Correspondence concerning the termination of the GA or the termination of the participation of the beneficiary(ies)		
Waivers		
Decision on the waiving of the recovery of the debts / amounts due	Full access: if the Commission publishes the decision	Upon publication by the Commission

5.10. MEANS OF REDRESS

Document requested	Usual administrative practice	Timing
Failed submission		
Complaint on failed submission		
Committee report / Report of the IT Helpdesk		
Letter of reply	Full access: template	
Admissibility and eligibility		
Request for Admissibility / Eligibility review		
Committee report	Full access: template	
Letter of reply	Full access: template	
Evaluation review		
Request for Evaluation review (Article 16 of <i>RfP</i>)		

Input for evaluation review	Partial access: privacy & integrity and commercial interests exceptions	GestDem 2019/0707
Committee report	Full access: template Partial access: privacy & integrity and commercial interests exceptions	GestDem 2019/0707
Letter of reply	Full access: template	
Article 22 requests		
Request for the review of legality of the EA decisions (Article 22 of Regulation 58/2003)	Partial access (commercially sensitive information and personal data)	GestDem 2018/1868
Submission of the EA		
Correspondence with the complainant		
Letter of reply	Full access: template	