



Public Access to Documents in DG CONNECT

CAD Team Unit R.3/Legal Sector Unit R.4

Disclaimer: The information provided in these slides is not exhaustive and needs to be understood as being complemented by the relevant legislative and administrative documents.

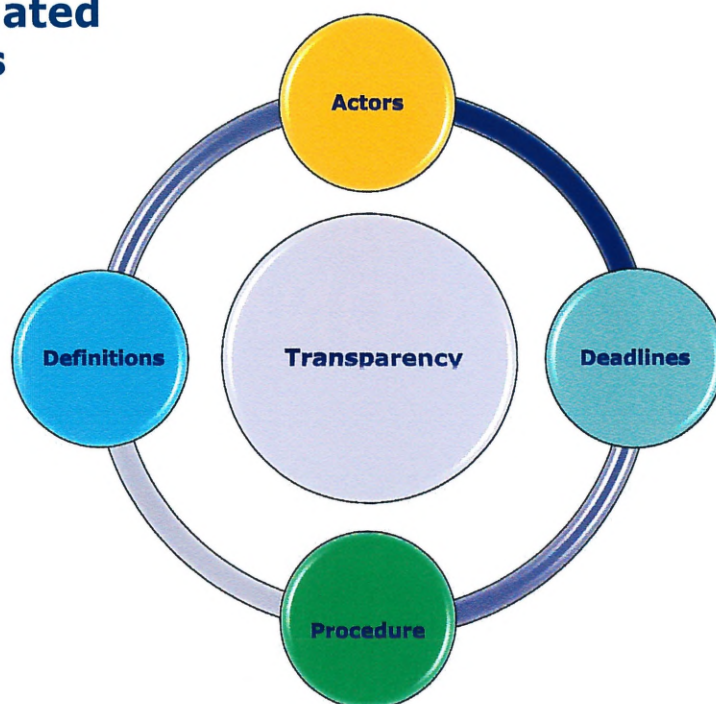
DG CONNECT

CONTENT OF THE PRESENTATION

- *Introduction*
- *WHY? → Background*
- *WHAT? → Scope & definitions*
- *WHO & HOW? Procedure*
- *WHEN? Deadlines!*
- *Control question(s)*
- *WHY NOT? Exceptions, remedies & specific matters*
- *More small exercises? 3rd party documents*
- *Best practices!*
- *Q & A*



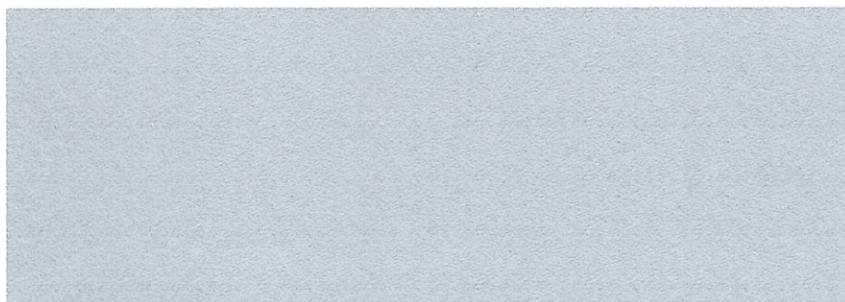
A2D related aspects



European Commission | Communications Networks,
Content & Technology

A2D coordination in DG CNECT (I):

Access to Documents Cell (CAD) of Unit R.3



CNECT-CAD@ec.europa.eu



European Commission | Communications Networks,
Content & Technology

A2D coordination in DG CNECT (II):

Access to Documents Coordinators of the Legal Sector in Unit R.4



CNECT-R4-LEGAL-QUESTIONS@ec.europa.eu



European
Commission | Communications Networks,
Content & Technology

WHY ?



European
Commission | Communications Networks,
Content & Technology

Legal Framework

- *Transparency: a constitutional principle*
- *Public access to documents: a fundamental right*

Article 15(3) TFEU

Regulation [1049/2001](#) (R)

Commission [Decision 2001/937](#) (D)

- *Granting access to the public is the rule*
- *Access refusal is the exception*



European Commission | Communications Networks,
Content & Technology

Number of Access Requests (COMMISSION)

	Applications received	Access granted	Partial access	Access refused	Others (réattribution réponse sans objet etc.)
2015	6752	4002	888	926	936
2014	6227	4096	668	866	597



European Commission | Communications Networks,
Content & Technology

Number of Access Requests (DG CONNECT)

	Applications received	Access granted	Partial access	Access refused	Others (réattribution réponse sans objet etc.)
2015	159	71	18	21	49
2014	114	63	19	5	27



European
Commission | Communications Networks,
Content & Technology

Access beneficiaries

- ***Any natural or legal person*** [Art. 2(1) + 2(2) R, Art. 1 D]
- ***No obligation to give reasons*** for the request [Art. 6(1) R]
- ***No privileged access for anybody***
- ***Members of the European Parliament have the same rights*** as members of the public
- ***The European Parliament (EP) may also have access to confidential information*** (Annex 2 FwA EP-Commission)
- ***But e.g. NOT: public authorities of MS***



European
Commission | Communications Networks,
Content & Technology

A request for a document submitted by a staff member of a public authority of a MS should be treated as a request under Regulation 1049/2001?



European
Commission | Communications Networks,
Content & Technology

A request for a document submitted by a staff member of a public authority of a MS should be treated as a request under Regulation 1049/2001?

It depends...:

- **YES**, if the requester puts the request as an individual in his private capacity and under a private postal address. If this is not clear, the requester should be asked to clarify his/her request. During such clarification the clock in relation to the (assumed) access to documents deadline shall be stopped; the unit in charge needs to inform the CAD and should copy them accordingly.
- **NO**, If the request comes as a request from the public authority in question, it has to be dealt with in the ambit of the principle of 'sincere cooperation' (laid down in Article 4(3) TEU) and must be replied to and send a reply to the MS as soon as possible. Such requests need to be submitted to the Commission (SG) via the PermReps.



European
Commission | Communications Networks,
Content & Technology

WHAT ?



European Commission | Communications Networks,
Content & Technology

Scope

- Documents ***drawn up or received*** in all areas of activity [Art. 2(3) R]
- "Document" is ***any content*** whatever its medium [Art. 3(a) R]
- ***Existing documents*** in an ***existing version and format*** (no obligation to create or translate documents [Art. 10(3) R])
- Documents not older than 30 years
- ***All identified documents need to be registered in ARES or another eDomec compliant system (Basil, CIS-Net etc.) even if they need to be registered a posteriori, i.e. upon an incoming request for public access (Commission internal policy, cf. Note of former SG C. Day).***



European Commission | Communications Networks,
Content & Technology

Is a database a "document" in terms of Regulation 1049/2001?



European Commission | Communications Networks,
Content & Technology

Is a database a "document" in terms of Regulation 1049/2001?

Yes.

Data that can be normally or routinely extracted from a database is assessed like any other document under the Regulation.

Access is granted, unless a specific exception of Article 4 of the Regulation applies to the document, or parts thereof.



European Commission | Communications Networks,
Content & Technology

A request for access to a list of "all meetings on the DSM Package between Commissioner X and Company Y that took place between 1st January 2016 and to date, indicating also when and with which participants this happened exactly", is this a request to be treated (how?) under Regulation 1049/2001?



European
Commission | Communications Networks,
Content & Technology

A request for access to a list of "all meetings on the DSM Package between Commissioner X and Company Y that took place between 1st January 2016 and to date, indicating also when and with which participants this happened exactly", is this a request to be treated (how?) under Regulation 1049/2001?

If there is no such "list" existing, and if the requested information is contained in several existing documents, and if replying would involve compiling information from all such different documents, the application should be considered as a **request for information (and not registered as A2D request, or closed as A2D request and notified accordingly to the requester).**

Requests for information are dealt with under the Code of Good Administrative Behaviour for staff of the European Commission in their relations with the public.

The reply should be sent within 15 working days. A ***holding letter*** should be sent by the unit responsible for replying only if it does not expect to be able to meet the deadline.



European
Commission | Communications Networks,
Content & Technology

Limits – Principle of harm

- Documents are **accessible, unless** an exception applies (harm test)
- **No exempt categories** per se (not even classified documents): **case by case analysis**
- Exceptions apply **as long as protection is justified** (maximum 30 years)
- Exceptions to be **interpreted narrow**
- **No confidential information** may be used or released **in the motivation** of a refusal



European Commission | Communications Networks,
Content & Technology

WHO ? & HOW ?



European Commission | Communications Networks,
Content & Technology

[Potential] Actors in the A2D process

- ***Applicant***
- ***SG registry/Unit B.4***
- ***CAD (DG CONNECT)***
- ***DG CONNECT Unit/entity responsible for the document (HoU, case handler, secretariat)***
- ***[3rd parties]***
- ***[MS authorities]***
- ***A2D Legal Coordinator in DG CONNECT Unit R.4 (for access refusal VISA and for legal advice)***
- ***Director General***
- ***Secretary General***



European Commission | Communications Networks,
Content & Technology

Who can apply for public access to document(s) under Regulation 1049/2001?

- ***Any citizen*** may request access to any document owned by the Commission.
- However, ***not all documents*** must be provided.
- As a rule, the ***request must be replied within 15 working days.***



European Commission | Communications Networks,
Content & Technology

Who should provide the documents?

The unit in charge of the topic must provide a reply to the request, either by:

- *positive reply: **providing** a copy of the requested document(s) (granting full access)*
- *partially negative/partially positive reply : **providing** only a **part** of the requested document(s), other parts are suppressed, by visible expunging (only parts of the document(s) are covered by exceptions, other parts are released)*
- *negative reply: **refusing** access to the requested document(s) (comprehensive denial)*



European Commission | Communications Networks,
Content & Technology

What is the typical (default) workflow of a request of access to document(s)

- *The citizen logs a request via the **Europa** website*
- *The request is registered in **GestDem** by the SG registry*
- *The request is assigned by SG registry through GestDem to the **DG(CAD)** in charge of the topic*
- ***SG** sends acknowledgment receipt to the requester*
- *The **DG(CAD)** registers the request in ARES and assigns it to the unit in charge of the topic*



European Commission | Communications Networks,
Content & Technology

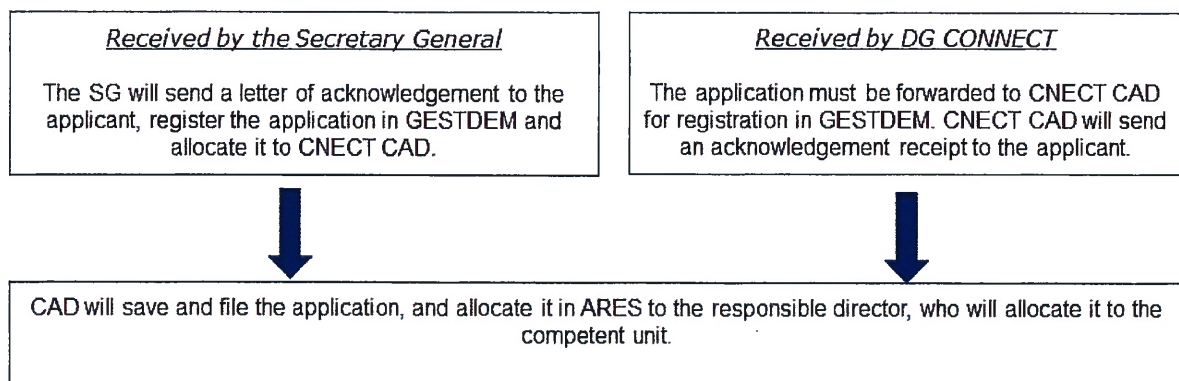
What is the workflow if a request is received in DG CONNECT at DG, Director or unit level?

- The **citizen** logs a request by **email or letter**
- The email or letter is transferred by the **DG, Director or unit to the DG(CAD)**
- The **DG(CAD)**
 - ✓ registers the request in both **GestDem** and **ARES**,
 - ✓ assigns it to the unit in charge of the topic, and
 - ✓ sends acknowledgment receipt to the requester



European Commission | Communications Networks,
Content & Technology

Receipt of initial application



European Commission | Communications Networks,
Content & Technology

GestDem



Technical information: [ghs@gestdem.at](#) ces.eu.int/1101 (env: Prod - version: 3.5.5 - build date: 18/04/2016)

GESTDEM
List of pending requests

[Home](#) [About](#) [Contact](#) [Help](#)
 english ▼

[Home](#) [Management](#) [Requestors](#) [Requests](#) [Documents](#) [Logout](#)

Welcome to GESTDEM Application

List of pending requests

13 item(s) found, displaying 1 to 13. Page(s): 1. Item(s) per page: 30.

Reference	Requestor	DG attribution	Unit attribution	Registration date	Deadline	Extended deadline	Comments	Status
2016/0678		CNECT	CNECT.D.4	12/02/2016	04/03/2016		Ares(2016)778859 - Dir D	
2016/1922		CNECT	CNECT.D.4	14/04/2016	10/05/2016	03/06/2016	Ares(2016)1775777 - Dir D	
2016/2372		CNECT	CNECT.G.6	02/05/2016	27/05/2016		RegDoc automatic request - Réattribuée à...	
2016/2497		CNECT	CNECT.R.5	02/05/2016	27/05/2016		RegDoc automatic request - Ares(2016)2098725...	
2016/2414		CNECT	CNECT.R.5	02/05/2016	27/05/2016		RegDoc automatic request - Ares(2016)2098735...	
2016/2445		CNECT	CNECT.G.6	02/05/2016	27/05/2016		RegDoc automatic request - Ares(2016)2108307...	
2016/2521		CNECT	CNECT.F.5	09/05/2016	01/06/2016		RegDoc automatic request - Ares(2016)2168159...	
2016/2631		CNECT	CNECT.B.3	11/05/2016	02/06/2016		RegDoc automatic request - Ares(2016)2195539...	
2016/2635		CNECT	CNECT.G.6	11/05/2016	02/06/2016		RegDoc automatic request - Réattribuée à...	
2016/2835		CNECT	CNECT.F.5	23/05/2016	13/06/2016		Ares(2016)2370537 - Dir F	



European Commission | Communications Networks,
Content & Technology

How to prepare the reply? Who prepares the reply?

- The **unit assigns** the request to a **case handler**
- The **case handler assesses** the request and decides whether to provide the document or not

In case of doubt the case handler asks her/his HoU and/or Unit R.4 (i.e. the A2D coordinators within the R.4 Legal Team)

- The **draft reply is uploaded** by the **unit** in **ARES**, signed-off, registered and sent (by email and postal mail - AR) + cc DG(CAD)
- All this within the 15 working days deadline



European Commission | Communications Networks,
Content & Technology

Who signs the reply (I)?

The **HoU** (or colleague to whom s/he delegates),

- when the **document is provided without any restriction**, or
- when the **document is provided with restrictions** that concern only **personal data** (i.e. redacting of persons' identities)



European Commission | Communications Networks,
Content & Technology

Who signs the reply (II)?

The **Director-General**,

- when **only partial access is provided** to a document (other redactions than just personal data/identity of persons), or
- when **access is comprehensively refused**, or
- when there is **no document corresponding to the request** (case of the request being 'devoid of purpose').

When there is any redaction or refusal, unit R.4 will have to approve this decision (VISA in Ares) before the reply is signed-off



European Commission | Communications Networks,
Content & Technology

What happens if a request cannot be replied to within 15 days?

- *The case handler unit shall send a 'holding reply', duly explaining the reasons for the delay*
- *The holding reply shall then also contain the prolongation of the deadline by another 15 working days*
- *This can only be done once per request!*



European Commission | Communications Networks,
Content & Technology

What happens if no reply is sent or if the reply is not timely sent?

- *The **citizen may log a 'confirmatory application'** with SG – to be replied by SG within 15 working days*
- ***SG will ask the (case handler) unit in charge to provide explanations, plus the requested documents, within 24 hours***

***NEGATIVE mention of the DG and unit in charge
in SG Annual Report to the EP***



European Commission | Communications Networks,
Content & Technology

What may happen when access has been totally or partially refused by the DG?

- *The **citizen** may log a 'confirmatory application' with the SG*
- ***SG** will ask the (case handler) unit in charge to provide all the elements of the file, including unredacted versions of the requested documents, within 24 hours and will double-check the unit's decision with the Legal Service*
- ***SG** will need to provide a **final reply to the citizen within 15 working days***



European
Commission | Communications Networks,
Content & Technology

WHEN ?



European
Commission | Communications Networks,
Content & Technology

Deadlines

Initial applications (DG level)

*Time limit: **15 working days** + (1 time only!)
reasoned extension by another 15 working days*
[Art. 7(3) R]

Confirmatory applications (SG level)

*Time limit: **15 working days** + (1 time only!)
reasoned extension by another 15 working days*
[Art. 8(2) R]

Any extension must be well-reasoned!



European Commission | Communications Networks,
Content & Technology

Clarification requests & wide-scope applications

*Insufficiently **precise** requests: clarification
procedure* [Art. 6(2) R]

- Clarification request stops the clock.
- The 15 working days handling deadline continues to run only after the applicant has provided sufficient clarifications.

Voluminous applications: fair solution [Art. 6(3) R]



European Commission | Communications Networks,
Content & Technology

A request for access to documents was registered by CNECT CAD on Friday 1 April 2016. A clarification request is sent out by email on 4 April, clarifying answer received on 8 April. The deadline for the reply to the A2D request is 22 April 2016?



European
Commission | Communications Networks,
Content & Technology

A request for access to documents was registered by CNECT CAD on Friday 1 April 2016. A clarification request is sent out by email on 4 April, clarifying answer received on 8 April. The deadline for the reply to the A2D request is 22 April 2016?

NO.

Normally the deadline for reply would be 22 April 2016, i.e. 15 working days from the date of the registration.

However, in this case, a clarification was needed and performed. Accordingly the clock was stopped on between 4 and 8 April. Since the clock would have started counting as of 4 April, the new date is calculated with the full 15 working day period, starting upon receipt of the (sufficient) clarification answer, so effectively starting on 11 April and ending on 29 April 2016.



European
Commission | Communications Networks,
Content & Technology

Control question



European
Commission | Communications Networks,
Content & Technology

**An email requesting access to a specific document,
without using the proper form provided for A2D
requests on the SG webpage/Europa server, has it to
be treated as a request for access to documents under
Regulation 1049/2001?**



European
Commission | Communications Networks,
Content & Technology

An email requesting access to a specific document, without using the proper form provided for A2D requests on the SG webpage/Europa server, has it to be treated as a request for access to documents under Regulation 1049/2001?

Yes.

This is a request to be treated under the Regulation. However, you need to ask for a valid postal address of the requesting party, in order to provide the answer in compliance with the Commission's procedural requirements.

A standard message template is available on the SG webpage, by which the requesting party needs to be informed that the application will not be registered until the postal address is provided.



European
Commission | Communications Networks,
Content & Technology

WHY NOT ?



European
Commission | Communications Networks,
Content & Technology

Exceptions:

Article 4(1)-(3) of Regulation 1049/2001

Why should access not be granted?

Legitimate interests that require protection

Differentiation:

- ***Absolute*** exceptions: harm? → if YES, ***access is denied***
- ***Relative*** exceptions: double test
 - 1) Harm? → if YES: Is there an...
 - 2) Overriding public interest in disclosure? If YES: disclosure. If NO: access refused.



European Commission | Communications Networks,
Content & Technology

Absolute exceptions

Article 4(1) of Regulation 1049/2001

'Public interest' in terms of:

- Public security
- Defence and military matters
- International relations
- Financial, monetary or economic policy of the EU or a Member State

'Privacy and integrity of the individual':

***Link to the area of protection of personal data
(Regulation 45/2001)***

In case of expected 'harm', access shall be denied!



European Commission | Communications Networks,
Content & Technology

Relative exceptions

Article 4(2) and 4(3) of Regulation 1049/2001

- ***Commercial interests (including IP)***
- ***Legal advice and court proceedings***
- ***The purpose of inspections, investigations and audits***

- ***Decision-making process (to be differentiated: before/after decision taking)***

Balance harm against the public interest in disclosure!

For a lawful disclosure the public interest must be overriding!



European Commission | Communications Networks,
Content & Technology

Repeated requests – abusive requests

Repeated requests:

After a refusal, the applicant may make a new request for the same documents → the institution shall assess the request in the light of the potentially new situation.

Abusive/repetitive requests:

Correspondence may be discontinued based on the Code of Good Administrative Behaviour for staff of the European Commission in their relations with the public (Art. 4 – Dealing with enquiries (...) – correspondence - (...)) These rules do not apply to correspondence which can reasonably be regarded as improper, for example, because it is repetitive, abusive and/or pointless. Then the Commission reserves the right to discontinue any such exchanges of correspondence.



European Commission | Communications Networks,
Content & Technology

Sensitive documents

Article 9 Regulation 1049/2001

- Documents from **public authorities classified** as "EU Confidential", "EU Secret" or "EU Top secret UE" in accordance with security rules **in the areas of:** public security, defence and military matters, international relations, financial, monetary or economic policy
- Handling by **authorised staff**
- Disclosed only **with consent of originator**



European Commission | Communications Networks,
Content & Technology

Confirmatory applications

Article 8 R and Article 4 D

- Possibility of confirmatory application to be mentioned at the end of the initial (DG level) reply
- Submitted to the **Secretary-General** within 15 working days [Art. 7(2) R]
- Time limit: **15 working days** + extension with 15 working days [Art. 8(2) R]
- **Commission Decision** (Secretary-General by delegation)
- **Legal Service approval** required
- DG involvement? → "case-handler unit"



European Commission | Communications Networks,
Content & Technology

Receipt of confirmatory application



A confirmatory application will always be received by the SG

The SG will send a letter of acknowledgement to the applicant, update the application in GESTDEM and allocate it to CNECT CAD.

CNECT CAD will save the confirmatory application in ARES and allocate it to the responsible director, who will allocate it to the competent unit.

Answer to confirmatory application



The answer to a confirmatory application will always be sent to the applicant by the SG

The unit having dealt with the request has to provide input within 24/48 hours (containing the list of the requested documents and the case handler's name).



European
Commission | Communications Networks,
Content & Technology

Remedies

Article 8(3) R

European Ombudsman → 2 years

General Court of the EU → 2 months



European
Commission | Communications Networks,
Content & Technology

3rd PARTY DOCUMENTS



European
Commission | Communications Networks,
Content & Technology

Does the Commission have to treat A2D requests relating to documents in its possession, which originate from 3rd parties?



European
Commission | Communications Networks,
Content & Technology

Does the Commission have to treat A2D requests relating to documents in its possession, which originate from 3rd parties?

YES. 3rd party documents fall also in the general scope of A2D [Art. 4(4) and (5) R].

Usually, when the Commission receives an application for access to a document which it holds but which originates from a 3rd party, a check, whether one of the exceptions provided for by Art. 4(1)-(3) R applies, is performed.

If, after that examination, the conclusion is that access to it must be refused, the negative answer shall be sent to the applicant without consultation of the 3rd party author.

Consultation is not necessary also if: (a) the document requested had already been disclosed either by its author or under the Regulation or similar provisions; (b) the disclosure, or partial disclosure, of its contents would not obviously affect one of the interests referred to in Art. 4 R.

In all other cases, the originator of the document must be consulted.



European
Commission | Communications Networks,
Content & Technology

Does the Commission have to treat A2D requests relating to documents in its possession, which originate from MS?



European
Commission | Communications Networks,
Content & Technology

Does the Commission have to treat A2D requests relating to documents in its possession, which originate from MS?

YES. [Art. 4 (5) R and Art. 5 D]

Such documents are treated as documents originating from 3rd parties.

In fact they represent a specific type of 3rd party documents.

[See previous case for further details]



European
Commission | Communications Networks,
Content & Technology

Does the Commission need to consult a 3rd party, before disclosing it partially or in its entirety to and A2D requestor?



European
Commission | Communications Networks,
Content & Technology

Does the Commission need to consult a 3rd party, before disclosing it partially or in its entirety to and A2D requestor?

Not in all cases.

If, upon examination, the clear conclusion is that access to a document must be refused under one of the exceptions provided for by Art. 4 R, the negative answer shall be sent to the applicant without consultation of the third-party author.

Consultation is also not necessary, if: (a) the document requested had already been disclosed either by its author or under the Regulation or similar provisions; (b) the disclosure, or partial disclosure of its contents would obviously not affect one of the interests protected by the exceptions contained in Art. 4 R.



European
Commission | Communications Networks,
Content & Technology

May the name of the applicant be disclosed during the consultation process to the consulted 3rd party authors of the documents requested?



European
Commission | Communications Networks,
Content & Technology

May the name of the applicant be disclosed during the consultation process to the consulted 3rd party authors of the documents requested?

NO.

Whereas the DG as the institution dealing with the request should have clarity about the identity of the requestor, a disclosure of the requestor is neither foreseen by the wording of the Regulation, nor by the underlying legal concept.

From a legal point of view the request of consulted 3rd parties to know the name of the applicant is a request for information. Disclosure of the applicant's name would entail a transfer of personal data, falling under the provisions of Regulation 45/2001. For transfers of personal data within the EU, Article 8(b) of Regulation 45/2001 requires the recipient to establish, through the provision of one or more express and legitimate reasons, the necessity of the transfer of the personal data. In general, such necessity will not be given.



European
Commission | Communications Networks,
Content & Technology

BEST PRACTICES



European
Commission | Communications Networks,
Content & Technology

Best Practices

N°1

Start working immediately on the request!



European
Commission | Communications Networks,
Content & Technology

Best Practices

N°2

Clearly define the scope of the request!

Clarify with the applicant, if necessary!



European
Commission | Communications Networks,
Content & Technology

Best Practices

N°3

Respect the deadlines!



European Commission | Communications Networks,
Content & Technology

Best Practices

N°4

**Make use of the SG templates as
the basis for your reply!**

**Adapt the template(s) to your
specific case (content) and to
Eurolook (format)!**



European Commission | Communications Networks,
Content & Technology

Best Practices

N°5

Use and follow the
A2D handling checklist!



European
Commission | Communications Networks,
Content & Technology

Best Practices

N°6

3rd party consultation:

At (our) initial DG level, NEVER release a document against an explicit "no release" position of the consulted 3rd party!

Consult with your CNECT A2D Legal Coordinator in Unit R.4!



European
Commission | Communications Networks,
Content & Technology

Best Practices

N°7

Registered postal mail with receipt of acknowledgment should be the rule for milestone communications with the requestor (potential latter need of evidence...)!



European Commission | Communications Networks,
Content & Technology

Best Practices

N°8

For questions relating to the formal aspects of the A2D request processing:

Ask the CAD!

CNECT-CAD@ec.europa.eu



European Commission | Communications Networks,
Content & Technology

Best Practices

N°9

Consult with your CNECT A2D Legal Coordinator in Unit R.4 in case of complex/sensitive cases or if you have any A2D related (legal) questions!

CNECT-R4-LEGAL-QUESTIONS@ec.europa.eu



European Commission | Communications Networks,
Content & Technology

Best Practices

N°10

Your first point of contact for A2D are always the CAD and/or the A2D Legal Coordinator of your DG!

Do not take direct contact with unit SG B.4 on own initiative, unless they contact you!

Keep CAD and A2D Legal Coordinator of your DG informed about progress and outcome of confirmatory applications!



European Commission | Communications Networks,
Content & Technology

Best Practices

N°11

**Comply with the SG document
management and registration
policy as regards A2D!**



European
Commission | Communications Networks,
Content & Technology

Best Practices

N°12

Respect the deadlines!



European
Commission | Communications Networks,
Content & Technology

Thank you for your attention!



European
Commission | Communications Networks,
Content & Technology

Any questions?



European
Commission | Communications Networks,
Content & Technology