



European Network and Information Security Agency

MANAGEMENT BOARD DECISION of the European Network Information Security Agency

on the implementation of Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to documents.

THE MANAGEMENT BOARD,

Having regard to Regulation (EC) No 460/2004 of the European Parliament and of the Council of 10 March 2004 establishing the European Network and Information Security Agency, that has been amended by Regulation (EC) 580/2011 of the European Parliament and of the Council of 8 June 2011 amending Regulation (EC) No 460/2004 establishing the European Network and Information Security Agency as regards its duration and in particular Article 6(6) thereof;

Whereas the Treaty on the Functioning of the European Union enshrines the principle of transparency in the third paragraph of Article 15 states that any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph.

Whereas transparency is a guarantee of greater legitimacy, efficiency and responsibility of the administration with respect to its citizens in a democratic system and whereas transparency contributes towards reinforcement of the principles of democracy and respect for fundamental rights as defined in Article 6 of the Treaty on European Union and in the Charter of Fundamental Rights of the European Union;

Whereas it is therefore necessary to establish rules for implementing 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 for all documents which are not covered by the above-mentioned provisions;

Whereas clear rules assist smooth administration by helping those responsible to deal accurately and rapidly with applications made by the public,

HAS ADOPTED THIS DECISION:

Article 1 Beneficiaries

1. Citizens of the Union and natural or legal persons residing or having their registered office in a Member State shall exercise their right of access to documents of the European Network

Information Security Agency - ENISA (hereinafter 'the Agency') pursuant to Article 2(1) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereinafter 'Regulation (EC)No 1049/2001') in accordance with these detailed rules.

2. Pursuant to Article 2(2) of Regulation (EC) No 1049/2001, citizens of third countries not residing in a Member State and legal persons not having their registered Agency in one of the Member States shall enjoy the right of access to Agency documents on the same terms as the beneficiaries referred to in Article 2(1) of Regulation (EC) No 1049/2001.

Article 2 *Applications for access*

1. All applications for access to a document shall be sent to the Agency via the Agency's website (www.enisa.europa.eu), by electronic mail (info@enisa.europa.eu), by post [European Network Information Security Agency (ENISA) P.OP. BOX 1309 71001 Heraklion, Greece, or by fax [(+30) 2810 39 1895]]. The Agency shall answer initial and confirmatory access applications within fifteen working days from the date of registration of the application. In the case of complex or bulky applications, the deadline may be extended by fifteen working days. Reasons must be given for any extension of the deadline and it must be notified to the applicant beforehand.

2. If an application is imprecise, as referred to in Article 6(2) of Regulation (EC) No 1049/2001, the Agency shall invite the applicant to provide additional information making it possible to identify the documents requested; the deadline for reply shall run only from the time when the Agency has this information.

3. Any decision which is even partly negative shall state the reason for the refusal based on one of the exceptions listed in Article 4 of Regulation (EC) No 1049/2001 and shall inform the applicant of the remedies available to him.

Article 3 *Processing of initial applications*

1. Without prejudice to Article 8 of this Decision, as soon as the application is registered, an acknowledgement of receipt shall be sent to the applicant, unless the answer can be sent by return post. The acknowledgement of receipt and the answer shall be sent in writing, where appropriate, by electronic means. The applicant shall be informed of the response to his application. Any reply which is even partly negative shall inform the applicant of his right to submit, within fifteen working days from receipt of the answer, a confirmatory application to the Agency.

2. In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the Agency's reply, make a confirmatory application asking the Agency to reconsider its position.

3. Failure by the Agency to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

Article 4 *Processing of confirmatory applications*

1. The Executive Director of the Agency shall take the decisions refusing access relating to confirmatory applications. He shall inform the Management Board of the Agency of such actions.

2. The decision shall be notified to the applicant in writing, where appropriate by electronic means, and shall inform him of his right to bring an action before the General Court or to lodge a complaint with the European Ombudsman.

Article 5
Consultation

1. Where the Agency receives an application for access to a document which it holds but which originates from a third party, the Agency shall check whether one of the exceptions provided for under Article 4 of Regulation (EC) No 1049/2001 applies.

2. If, after that examination, the Agency considers that access to it must be refused under one of the exceptions provided for by Article 4 of Regulation (EC) No 1049/2001, the negative answer shall be sent to the applicant without consultation of the third-party author.

3. The Agency shall grant the application without consulting the third-party author where:

- a) the document requested has already been disclosed either by its author or under Regulation (EC) No 1049/2001 or similar provisions;
- b) it is obvious that the disclosure, or partial disclosure, of its contents would not affect one of the interests referred to in Article 4 of Regulation (EC) No 1049/2001.

4. In all other cases, the third-party author shall be consulted. In particular, if an application for access concerns a document originating from a Member State, the Agency shall consult the originating authority where:

- c) the document was forwarded to the Agency before the date from which Regulation (EC) No 1049/2001 applies;
- d) the Member State has requested the Agency not to disclose the document without its prior agreement, in accordance with Article 4(5) of Regulation (EC) No 1049/2001.

5. The third party consulted shall have a deadline for reply which shall be no shorter than five working days but must allow the Agency to abide by its own deadlines for reply. In the absence of an answer within the prescribed period, or if the third party is untraceable or not identifiable, the Agency shall decide in accordance with the rules on exceptions in Article 4 of Regulation (EC) No 1049/2001, taking into account the legitimate interests of the third party on the basis of the information at its disposal.

6. If the Agency intends to give access to a document against the explicit opinion of the author, it shall inform the author of its intention to disclose the document after a ten-working days period and shall draw his attention to the remedies available to him to oppose disclosure.

Article 6
Exercise of the right of access

1. Documents shall be sent by mail, fax or, if available, by e-mail. If documents are voluminous or difficult to handle, the applicant may be invited to consult the documents on the spot. This consultation shall be free.
2. If the document has been published, the answer shall consist of the publication references and/or the place where the document is available and where appropriate of its web address on the Agency's website www.enisa.europa.eu.
3. If the volume of the documents requested exceeds twenty pages, the applicant may be charged a fee of EUR 0.10 per page plus carriage costs. The charges for other media shall be decided on a case by case basis but shall not exceed a reasonable amount.

Article 7
Measures facilitating access to the documents

1. In order to make citizens' rights deriving from Regulation (EC) No 1049/2001 effective, the Agency shall provide access to a register of documents. The register shall be accessible in electronic form.
2. The register shall contain the title of the document (in the languages in which it is available), its serial number and other useful references, an indication of its author and the date of its creation or adoption.
3. A help page shall inform the public how the document can be obtained. If the document is published, there shall be a link to the original text.

Article 8
Documents directly accessible to the public

1. This Article applies only to documents drawn up or received after the date from which Regulation (EC) No 1049/2001 applies.
2. The following documents shall be automatically provided on request and, as far as possible, made directly accessible by electronic means:
 - a) documents adopted by the Executive Director of the Agency for publication in the Official Journal of the European Union;
 - b) documents originating from third parties which have already been disclosed by their author or with his consent;
 - c) documents already disclosed following a previous application.

Article 9
Entry into force

This Decision shall enter into force on the date of its signature.

*Article 10
Publication*

This decision shall be published on the website of the Agency.

Done at Limassol, Cyprus, 9 October 2012

For the Management Board
The Chairperson



Mari Herranen