



DECISION SC (2008) 001 OF THE TEN-T EA STEERING COMMITTEE

30TH SEPTEMBER 2008

Laying down detailed rules for the implementation of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to documents

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THE STEERING COMMITTEE OF THE TRANS-EUROPEAN TRANSPORT NETWORK EXECUTIVE AGENCY,

Having regard to Commission Decision 2007/60/EC of 26 October 2006 establishing the Trans-European Transport Network Executive Agency pursuant to Council Regulation (EC) N° 58/2003¹ amended by Commission Decision 2008/593/EC of 11 July 2008².,

Whereas:

- (1) In accordance with Article 255(2) of the EC Treaty, the European Parliament and the Council adopted Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents³,
- (2) It was recommended in the above Regulation, that all agencies established by the institutions should apply the principles laid down in this Regulation,
- (3) In accordance with article 9(6) of the Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes⁴, the Steering Committee shall adopt any special rules needed to implement the right of access to the executive agency's documents in accordance with Article 23(1),

HAS ADOPTED THIS DECISION:

Article 1

Beneficiaries and scope

1. Any Citizen of the Union and any natural or legal person residing or having its registered office in a Member State has a right of access to the Trans-European Transport Network Executive Agency (hereinafter referred to as 'the Agency') documents pursuant to Article 2(1) of Regulation (EC) No 1049/2001, subject to the principles, conditions and limits defined in this decision.
2. Pursuant to Article 2(2) of Regulation (EC) No 1049/2001, the Agency may grant access to the Agency's documents, subject to the same principles, conditions and limits as

¹ OJ L 32, 6.2.2007, p. 88.

² OJ L 190, 18.7.2008, p. 35.

³ OJ L145, 31.05.2001, p. 43..

⁴ OJ L 11 16.01.2003, p. 1..

those applicable to the beneficiaries referred to in Article 2(1) of Regulation 1049/2001, to any natural or legal person not residing or having its registered office in a Member State.

3. These rules shall apply to all documents held by the Agency, that is to say, documents drawn up or received by it and in its possession.

Article 2

Applications for access to documents

1. Applications for access to a document shall be made in any written form, including electronic form, in a sufficiently precise manner to enable the Agency to identify the document. The applicant is not obliged to state their reasons for the application.

2. If an application is not sufficiently precise, the Agency shall invite the applicant to clarify the application and to provide additional information making it possible to identify the document(s) requested.

3. The details on how and where applications for access to documents can be made shall be published on the Agency's website.

4. 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. An application for access to a document shall be handled within fifteen (15) working days from registration of the application. An acknowledgment of receipt shall be sent in any written form, including electronic form, to the applicant, unless the answer to the application can be sent directly by return mail.

2. The applicant shall be informed in a written reply, where appropriate by electronic means, of the results given to his/her application by the Document Access Coordinator, a member of staff designated for this purpose. Within the time-limit referred to in paragraph 1, the Agency shall either grant access to the document(s) requested or state the reasons for the total or partial refusal and inform the applicant of his/her right to make a confirmatory application in accordance with paragraph 5 of this Article.

3. In the event of a complex application or an application relating to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that the detailed reasons are given.

4. In the event of an imprecise application, the time-limit provided for in paragraph 1 shall start to run from the day the Agency officially receives additional information or clarification from the applicant.

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

6. 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. A confirmatory application shall be handled within fifteen (15) working days from its registration.

2. The applicant shall be informed in a written reply, where appropriate by electronic means, of the results given to his/her confirmatory application by the Director of the Agency. Within the time-limit referred to in paragraph 1, the Agency shall either grant access to the document(s) requested or state the reasons for the total or partial refusal. In the event of a total or partial refusal, the Director of the Agency shall inform the applicant of the remedies open to him/her, namely instituting court proceedings against the Agency and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.

3. In the event of a complex application or an application relating to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that the detailed reasons are given.

4. The absence of reply within the prescribed time-limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the Agency and/or make a complaint to the Ombudsman, under the relevant provisions of the EC Treaty.

Article 5

Access to third-party's documents

1. Where the Agency receives an application for access to a document it holds but which originates from a third-party, the Agency shall consult the third-party with a view to assessing whether an exception referred to in Article 4 of Regulation (EC) 1049/2001 applies, unless it is clear that the document shall or shall not be disclosed.

2. The third-party shall have a deadline to comment on the application for access to the document of which he/she is the author of a minimum of five (5) working days, but must enable the Agency to abide by its own deadlines for reply. The absence of a reply within the prescribed time-limit shall be considered as a positive reply and the Agency may grant access to the requested documents, subject to the exceptions defined under Articles 4(1) and 4(2) of Regulation (EC) 1049/2001.

3. Where release of the document(s) requested is prevented by one of the exceptions referred to in Article 4 of Regulation (EC) 1049/2001, the Agency shall notify the applicant of the refusal in a written reply, where appropriate by electronic means, without consulting the third-party author of the document(s). If only parts of the requested document(s) are covered by any of the exceptions referred to in Article 4 of Regulation (EC) 1049/2001, the Agency shall grant access to the remaining parts of the document(s).

4. With the exception of documents originating from a Member State, the Agency shall grant access to a document without prior consultation of its author, when the document has already been released by its author or when it is clear that the disclosure of the contents of the document, in whole or part, will not undermine the protection of the interests referred to in Article 4 of Regulation (EC) No 1049/2001.

Article 6

Treatment of sensitive documents

1. Sensitive documents are documents originating from the Agency itself, from the institutions, Member States, third countries or international organisations classified as 'Très Secret/Top Secret', 'Secret' or 'Confidential' in accordance with the institution concerned, which protect essential interests of the European Union or of one or more of its members States in the areas covered by Article 4 (1) (a) of Regulation (EC) 1049/2001, notably public security, defence and military matters.

2. Application for access to sensitive documents under the procedures laid down in Articles 3 and 4 shall be handled only by officials who have a right to acquaint themselves with those documents.

3. Any decision of the Agency which refuses access to a sensitive document shall give the reasons for this refusal in a manner which does not harm the interests protected in Article 4 of Regulation (EC) 1049/2001. If it proves that access to the requested document may not be refused on the basis of the principles of Article 4 of Regulation (EC) No 1049/2001, the official handling the application shall ensure that the document is declassified before sending it to the applicant.

4. Where access to a sensitive document is to be given, the prior consent of the originator shall be requested.

Article 7

Access following an application

1. The applicant shall have access to documents either by receiving a copy, by whatever means, including, where available, an electronic copy, or by consulting them on the spot where the documents are voluminous or difficult to handle. Consultation on the spot shall be free of charge.

2. If a document has already been released by its author and is easily accessible to the applicant, the Agency fulfils its obligation to grant access to documents by informing the applicant how to obtain the requested document on the basis of its publication references, its location and, where available, its web address.

When the volume of the documents requested exceeds twenty (20) pages, the applicant may be charged a fee per page plus carriage costs. The cost of producing and sending copies through other media shall be decided case by case but shall not exceed a reasonable amount.

Article 8

Measures facilitating access to the documents

1. In accordance with the provisions of Article 11 of Regulation (EC) No 1049/2001, the Agency shall provide public access to a register of documents. Access to the register shall be electronic.

2. The coverage of the register referred to in paragraph 1 shall be extended gradually and announced on the homepage of the Agency's website.

3. For each document, the register shall contain the title of the document (in the languages in which it is available), a reference number, the subject matter and/or a short description of its contents, a reference of its author and the date on which it was drawn up or adopted.

A help-page shall inform the public how to obtain the document(s). If the document is published, there shall be a link to the full text.

Article 9

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) agendas for the Agency's Steering Committee;
- (b) ordinary minutes of the Agency's Steering Committee, after approval;
- (c) documents adopted by the Agency for publication in the Official Journal of the European Communities;
- (d) documents originating from third-parties which have already been disclosed by their author or with his/her consent;
- (e) documents already disclosed following a previous application.

Article 10

Internal organisation and report

1. The Director of the Agency and Heads of Unit shall have the power to decide on the action to be taken on initial applications. To this end, the Director shall designate a Document Access Coordinator, an official to consider access applications and coordinate the response.
2. On the basis of a draft submitted by the Director of the Agency, the Steering Committee shall publish annually, as part of the annual activity report, information for the preceding year concerning the implementation of this decision, including in particular statistics on the number of applications received, the number of refusals to grant access to a document and the reasons for such refusals.
3. The Agency's Steering Committee may review these implementing rules whenever deemed necessary and adopt any modifications needed.


Article 11

Entry into force

This decision shall take effect on the day after its adoption by the Steering Committee. It shall be made available on the homepage of the Agency's website.

Done at Brussels,
For the Trans-European Transport Network Executive Agency

Date: 30/09/2008

Signed.....

Jonathan Scheele, Chairman