

DECISION OF THE ADMINISTRATIVE BOARD OF THE EUROPEAN FOUNDATION FOR THE IMPROVEMENT OF LIVING AND WORKING CONDITIONS**of 26 March 2004****on the adoption of rules for implementing Regulation (EC) No 1049/2001 on public access to documents**

(2004/321/EC)

THE ADMINISTRATIVE BOARD,

Having regard to Council Regulation (EC) No 1649/2003 amending Regulation (EEC) No 1365/75 on the creation of a European Foundation for the Improvement of Living and Working Conditions and repealing Regulation (EEC) No 1417/76 ⁽¹⁾,

Whereas:

- (1) The general principles and limits governing right of access to documents As provided for in Article 255 of the Treaty have been laid down by 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 ⁽²⁾.
- (2) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the Agencies and similar bodies should implement rules conforming to those of that Regulation.
- (3) Regulation (EC) No 1649/2003 of 18 June 2003 amending Regulation (EEC) No 1365/75 on the creation of a European Foundation for the Improvement of Living and Working Conditions and repealing Regulation (EEC) No 1417/76 states that Regulation EC 1049/2001 shall apply to documents held by the Foundation.
- (4) Regulation (EC) No 1649/2003 states also that the Administrative Board shall adopt practical arrangements for implementing Regulation (EC) No 1049/2001 within six months of 29 September 2003, or entry into force of Council Regulation (EC) No 1649/2003.
- (5) Clear rules will assist smooth administration by helping those responsible to deal accurately and rapidly with applications made by the public,

HAS ADOPTED THIS DECISION:

*Article 1***Applicability and scope**

1. The right of access concerns documents held by the Foundation, that is to say, documents drawn up or received by it and in its possession.

⁽¹⁾ OJ L 245, 29.9.2003, p. 25.

⁽²⁾ OJ L 145, 31.5.2001, p. 43.

2. Citizens of the European Union and natural or legal persons residing or having their registered office in a Member State shall exercise right of access to Foundation documents pursuant to Article 2(1) of Regulation (EC) No 1049/2001.

3. 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 office in one of the Member States shall enjoy the right of access to Foundation 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. Applications for access to Foundation documents which are not publicly available shall be made in written form, including electronic form and in a sufficiently precise manner to enable the Foundation to identify the documents.

2. The Foundation shall answer initial and confirmatory access applications within 15 working days from the date of registration of the application.

3. In the case of complex or bulky applications, the deadline may be extended by 15 working days. Reasons must be given for any extension of the deadline and it must be notified to the applicant beforehand.

4. If an application is imprecise, as referred to in Article 6(2) of Regulation (EC) No 1049/2001, the Foundation shall ask 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 Foundation has this information.

5. Any decision which is 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.

*Article 3***Treatment of initial applications**

1. 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.

2. The applicant shall be informed of the response to his application by the Head of Administration.

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

4. Failure by the Foundation to reply within the prescribed time limit shall entitle the applicant to make a confirmatory application.

Article 4

Treatment of confirmatory applications

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

2. The decision shall be notified to the applicant in writing, or where appropriate by electronic means, and shall specify which of the exceptions provided for in Article 4 of Regulation (EC) No 1049/2001 it is based on and the reasons for it. It shall also inform him of his right to bring an action before the Court of First Instance or to lodge a complaint with the European Ombudsman.

Article 5

Consultations

1. Where the Foundation receives an application for access to a document which it holds but which originates from a third party, the Foundation shall check whether one of the exceptions provided for under Article 4 of the Regulation applies.

2. If, after that examination, the Foundation 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 Foundation 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 the Regulation or similar provisions;
- (b) the disclosure, or partial disclosure, of its contents will not affect one of the interests referred to in Article 4 of the Regulation.

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 of charge.

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 Foundation's website.

3. If the volume of the documents requested exceeds twenty pages, the applicant may be charged a fee of EUR 0,40 per page plus carriage costs. The charges for other media shall be decided case by case but shall not exceed a reasonable amount.

Article 7

Register of documents

1. In order to make citizen's rights deriving from Regulation (EC) No 1049/2001 effective, the Foundation shall provide access to a register of documents available through the Foundation's internet site.

2. The register shall contain the title of the document, a unique reference, the subject matter and/or a short description of the document and the date on which it was received or drawn up and recorded in the register.

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:

- (a) agendas and final minutes of meetings of the Administrative Board and Bureau;
- (b) decisions adopted by the Administrative Board and Bureau;
- (c) documents originating from third parties which have already been disclosed by their author or with his consent;
- (d) documents already disclosed following a previous application.

Article 9

Report

The Foundation shall publish annually as part of the Annual Report, information concerning the implementation of this decision, in particular statistics on the number of requests for access to documents of the Foundation, the number of refusals and the reasons for such refusals.

*Article 10***Entry into force**

This decision shall be published in the *Official Journal of the European Union* and shall enter into force on the day of its publication.

Done at Dublin, 26 March 2004.

For the Administrative Board

Marjaana VALKONEN
