

Decision no 14 of the Management Board of the European Foundation for the Improvement of Living and Working Conditions (“Eurofound”) adopting rules for the application of Regulation EC (No) 1049/2001 on public access to documents

THE MANAGEMENT BOARD OF THE EUROPEAN FOUNDATION FOR THE IMPROVEMENT OF LIVING AND WORKING CONDITIONS (hereinafter referred to as ‘Eurofound’ or ‘the Agency’),

Having regard to the Treaty on the Functioning of the European Union¹ (hereinafter referred to as ‘TFEU’), and in particular Article 15(3) third subparagraph,

Having regard to Regulation (EU) 2019/127 of 16 January 2019 establishing a European Foundation for the Improvement of Living and Working Conditions (Eurofound) and repealing Council Regulation (EEC) No 1365/75² (hereinafter referred to as ‘Eurofound’s Founding Regulation’), and in particular Article 24(2) and (3),

Having regard to 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 documents³ (hereinafter referred to as ‘Regulation (EC) No 1049/2001’),

Whereas:

- (1) The general principles and limits governing the right of access to documents, as provided for in Article 15(3) second subparagraph of the TFEU, have been laid down by Regulation (EC) No 1049/2001.
- (2) When Regulation (EC) No 1049/2001 was adopted, the European Parliament, the Council and the Commission agreed in a joint declaration⁴ that the Agencies and similar bodies should implement rules conforming to those of that Regulation.
- (3) By virtue of Article 24(2) and (3) of Eurofound’s Founding Regulation, Regulation (EC) No 1049/2001 shall apply to documents held by Eurofound and detailed rules for the application of that Regulation shall be adopted by its Management Board within six (6) months of the date of its first meeting.

¹. OJ C 326, 26.10.2012, p. 47–390.

². OJ L 30, 31.1.2019, p. 74–89.

³. OJ L 145, 31.5.2001, p. 43–48.

⁴. Joint declaration relating to 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 (OJ L 145 of 31.5.2001, p. 43).
OJ L 173, 27.6.2001, p. 5–5

- (4) Whereas the Management Board of Eurofound held its first meeting on 28 June 2019.
- (5) Eurofound has adopted rules for implementing Regulation (EC) No 1049/2001 on public access to documents in 2004⁵ with a view to facilitating smooth administration by helping those responsible to deal accurately and rapidly with applications for access to documents made by the public.
- (6) The existing rules on the implementation of Regulation (EC) No 1049/2001 should be replaced by new rules to take into account Eurofound's Founding Regulation, and in particular its provisions related to transparency, as well as the experience gained from the implementation of the existing rules.

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 Eurofound documents under Article 2(1) of Regulation (EC) No 1049/2001 in accordance with these rules. This right of access concerns documents held by Eurofound, that is to say, documents drawn up or received by it and in its possession in all areas of activity of Eurofound.
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 office in one of the Member States shall enjoy the right of access to Eurofound 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 a document shall be sent to Eurofound by e-mail, by post or by fax and in a sufficiently precise manner to enable Eurofound to identify the documents. The addresses to which applications are to be sent are published on Eurofound's website listed in the Annex to this Decision. The Executive Director may decide to update the Annex as necessary.
2. Eurofound shall answer initial and confirmatory access applications within fifteen (15) 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 (15) working days. Reasons must be given for any extension of the deadline. Any such reasoned decision for extension must be notified to the applicant before the expiry of the deadline.
3. If an application is not sufficiently precise, as referred to in Article 6(2) of Regulation (EC) No 1049/2001, Eurofound shall ask the applicant to provide additional information making it possible to identify the documents requested and shall assist the applicant in doing so; the deadline for reply shall run only from the time when Eurofound has this information.

⁵. See Decision of the Administrative Board of Eurofound of 26 March 2004 on the adoption of rules for implementing Regulation (EC) No 1049/2001 on public access to documents, OJ L 182, 7.4.2014, p. 81-83.

4. Any decision on total or partial refusal of access shall state the reason(s) 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 or her.

Article 3

Processing of initial applications

1. Without prejudice to Article 9 of this Decision, as soon as the application is registered, an acknowledgement of receipt shall be sent to the applicant, unless the reply can be sent immediately. The acknowledgement of receipt and the reply 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 the Resources Unit or by another member of staff of Eurofound designated for this purpose.
3. Any reply refusing total or partial access shall inform the applicant of his right to submit, within fifteen (15) working days from receipt of the reply, a confirmatory application to the Executive Director of Eurofound asking him or her to reconsider Eurofound's position.
4. Failure by Eurofound to reply within the prescribed time limit shall entitle the applicant to make a confirmatory application.

Article 4

Processing of confirmatory applications

1. Decisions on confirmatory applications shall be taken by the Executive Director of Eurofound.
2. The decision shall be notified to the applicant in writing, where appropriate by electronic means, and inform him or her of his or her right to initiate court proceedings against Eurofound or lodge a complaint with the European Ombudsman.

Article 5

Consultations

1. Where Eurofound receives an application for access to a document which it holds but which originates from a third party, Eurofound shall check whether one of the exceptions provided for by Article 4 of Regulation (EC) No 1049/2001 applies.
2. If, after that examination, Eurofound 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 reply refusing access shall be sent to the applicant without consultation of the third-party author.
3. Eurofound shall grant the access 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) the document does not originate from a Member State and 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 the application for access concerns a document originating from a Member State, Eurofound shall consult the originating authority within the Member State.

5. The third-party author consulted shall have a deadline to respond to the request for consultation which shall be such as to allow Eurofound to comply with its own deadline for reply and in no case shorter than five (5) working days. In the absence of an answer within the prescribed period, or if the third-party is untraceable or not identifiable, Eurofound shall take a decision 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 Eurofound 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 period of ten (10) working days and shall draw his or her attention to the remedies available to him or her to oppose disclosure. This is without prejudice to Article 4(5) of Regulation (EC) No 1049/2001.

Article 6

Exercise of the right of access

1. Documents shall be sent by e-mail, by fax or by post, depending on the application. 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 Eurofound's website.
3. If the volume of the documents requested exceeds twenty (20) 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.
4. All documents are subject to Eurofound's copyright policy available on Eurofound's website. The release of documents by Eurofound in response to requests submitted in accordance with Regulation (EC) No 1049/2001 is subject to the provisions of Article 16 of this Regulations. Eurofound shall assume no liability for any unlawful or unauthorised use, disclosure or reproduction of the documents.

Article 7

Treatment of applications for access to documents with sensitive information

1. Where an application for access concerns a Eurofound document with sensitive information⁶, it shall be handled by staff members entitled to acquaint themselves with that document.

⁶ In accordance with the definitions of Article 9 of the Commission Decision (EU, Euratom) 2015/443 of 13 March 2015 on Security in the Commission (OJ L 72, 17.3.2015, p. 41–52).

2. Reasons shall be given on the basis of the exceptions listed in Article 4 of Regulation (EC) No 1049/2001 for any decision refusing access to all or part of a document with sensitive information. If it proves that access to the requested document cannot be refused on the basis of these exceptions, the staff member handling the application shall ensure that the document is declassified before sending it to the applicant.
3. The agreement of the originating authority shall be required if access is to be given to documents with sensitive information.

Article 8

Measures facilitating access to the documents

1. In order to make citizen's rights deriving from Regulation (EC) No 1049/2001 effective, Eurofound shall provide public access to a register of documents available in electronic form through its website.
2. The register shall contain the title of the document (in the languages in which it is available), a unique reference number, an indication of its author (Eurofound or third party), its subject matter and/or a short description of its content and the date on which it was received or drawn up and recorded in the register.
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 full text.

Article 9

Documents directly accessible to the public

1. At least the following documents shall be made directly accessible on Eurofound's website:
 - a) the multiannual and annual work programme of Eurofound;
 - b) the Consolidated Annual Activity Report (CAAR) of Eurofound;
 - c) agendas and final minutes of meetings of the Management Board and Executive Board of Eurofound;
 - d) decisions adopted by the Management Board and Executive Board of Eurofound;
 - e) Other documents to be made publicly available under Eurofound's Founding Regulation.
2. The following documents shall be provided on request and, as far as possible, made directly accessible by electronic means:
 - a) Documents originating from third parties which have already been disclosed by their author or with their consent;
 - b) Documents already disclosed following a previous application.

Article 10

Internal organisation

1. The Executive Director shall coordinate and ensure uniform implementation of this within Eurofound. To this end, he or she shall provide all necessary advice and guidelines.
2. The Executive Director may designate staff members who shall be responsible for assessing access applications and coordinating Eurofound's response to such applications.

Article 11

Report

Eurofound shall publish annually, as part of the Consolidated Annual Activity Report (CAAR), information concerning the implementation of this Decision, in particular the number of requests for access to Eurofound documents, the number of refusals and the reasons for such refusals.

Article 12

Repeal

The Decision of the Administrative Board of Eurofound of 26 March 2004 on the adoption of rules for implementing Regulation (EC) No 1049/2001 on public access to documents shall be repealed with effect from the date of entry into force of the present Decision.

Article 13

Entry into Force

This Decision shall enter into force on the day following that of its adoption by the Management Board. It shall be published on Eurofound's website.

Done at Dublin on 8 November 2019

[A. Bulgarelli]

For the Management Board
The Chairperson

ANNEX

**ADDRESSES FOR SUBMISSION OF APPLICATIONS FOR ACCESS TO
DOCUMENTS HELD BY EUROFOUND**

By email to: Public.Access@eurofound.europa.eu

or: information@eurofound.europa.eu

By post to:

EUROFOUND

Wyattville Road,

Loughlinstown,

Dublin D18 KP65

By fax: + 353 1 2826456

Charges to be levied at the discretion of the Executive Director for large documents

Paper copies: EUR 0.10 per page plus carriage cost