

DECISION AB n° 08/2010

Procedures and practical measures for applying Regulation (EC) No 1049/2001 on access to documents of the Agency

THE ADMINISTRATIVE BOARD OF THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

HAVING REGARD to Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing a European Agency for the Cooperation of Energy Regulators (hereafter referred to as the "ACER Regulation" and "Agency"), and in particular to Articles 10(4) and 30(2) thereof,

HAVING REGARD to the Rules of Procedure (hereafter referred to as 'RoP') adopted by the Administrative Board on 6 May 2010 and in particular Article 9 thereof;

Whereas:

It is necessary to establish rules and adopt practical measures for applying 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, hereafter referred to as "Regulation 1049/2001",

The Administrative Board of the Agency agreed in Article 5(4) of its RoP to adopt practical and implementing measures for applying Regulation (EC) No 1049/2001 and the publication of documents in line with Article 10(4) of Regulation (EC) No 713/2009,

Given the urgency of deciding on these procedures and practical measures, to allow Agency's documents to be published and interested parties to apply for access to Agency's documents, the written procedure referred to in article 9(2) of the RoP is adopted,

HAS DECIDED, BY WRITTEN PROCEDURE, pursuant to article 9(2) of the RoP:

Article 1 - Scope

This Decision

- (a) defines the documents which are published on the Agency's website and therefore are directly accessible to the general public;
- (b) prescribes the arrangements under which the public shall be granted access to documents, other than those directly accessible, held by the Agency.

Article 2 — Measures facilitating access to documents

- 1) In order to make the right of access provided for in Regulation 1049/2001 effective, the Agency shall provide access to a register of documents. The register shall be accessible in electronic form.
- 2) The register of documents shall be structured in categories to facilitate consultation. The structure of the register is defined by the Director.
- 3) The register shall contain the title of the document (in the languages in which it is available), its serial number, a brief description of the contents, an indication of the author (Agency or third party), the date of its creation or adoption and the date of entry in the register.
- 4) For documents which are directly accessible, the register shall include a hyperlink to the document in question.
- 5) For documents which are not directly accessible, the register will provide details of how to request access, according to Articles 5 to 9 of this Decision.

Article 3 - Documents directly accessible to the public

- 1) The following documents shall be made directly accessible to the public by publication on the Agency's website;
 - (a) all EU legislation related to the Agency's mandate;
 - (b) the agenda of the meetings of the Administrative Board and the background documents related to the items included in the agenda unless the Board has determined that such background documents should not be published pursuant to Article 4 of Regulation 1049/2001;
 - (c) the decisions taken by the Administrative Board, unless the Board has determined that the publication of such decisions is not appropriate, pursuant to Article 10(4) of the ACER Regulation;
 - (d) the minutes of the meetings of the Administrative Board, unless the Board has determined that the publication of such minutes or part thereof is not appropriate, pursuant to Article 10(4) of the ACER Regulation;
 - (e) the agenda of the meetings of the Board of Regulators and the background documents related to the items included in the agenda, unless the Board has determined that such background documents should not be published pursuant to Article 4 of Regulation 1049/2001;
 - (f) the decisions taken by the Board of Regulators, unless the Board has determined that the publication of such decisions is not appropriate, pursuant to Article 10(4) of the ACER Regulation;
 - (g) the minutes of the meetings of the Board of Regulators, unless the Board has determined that the publication of such minutes or part thereof is not appropriate, pursuant to Article 10(4) of the ACER Regulation;

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- (h) the decisions taken by the Board of Appeal, unless the Board has determined that the publication of such decisions is not appropriate, pursuant to Article 10(4) of the ACER Regulation;
 - (i) the minutes of the meetings of the Board of Appeal, unless the Board has determined that the publication of such minutes or part thereof is not appropriate, pursuant to Article 10(4) of the ACER Regulation;
 - (j) the annual budget of ACER
 - (k) the list of contacts in ACER
 - (l) all press releases or other publications by ACER
- 2) As far as possible the following documents shall be made directly accessible by publication on the Agency's website:
- (a) documents originating from third parties which have already been disclosed to the general public by their author or with his or her consent;
 - (b) documents already disclosed to the general public, pursuant to Article 3 (1) of this Decision.
- 3) The Director may add to the list of documents in paragraph 2) as appropriate, after consultation with the Administrative Board.
- 4) Notwithstanding paragraph 1)(f):
- (a) the opinions provided by the Board of Regulators pursuant to Article 15(1) and (2) of the ACER Regulation, are only published if and as acknowledged in the opinions, recommendations and decisions adopted by the Agency to which they refer;
 - (b) the decision by the Board of Regulators on the approval of the work programme of the Agency, pursuant to Article 15(3) of the ACER Regulation, is only published if and as acknowledged in the decision on the adoption of the work programme by the Administrative Board;
 - (c) the decision by the Board of Regulators on the approval of the independent section on regulatory activities of the annual report, pursuant to Article 15(4) of the ACER Regulation, is only published if and as acknowledged in the decision on the adoption of the annual report by the Administrative Board.
- 5) Documents referred to in paragraph 1) are published on the Agency's website within a reasonable time after they have been adopted or issued.

Article 4 – Persons entitled to access Agency documents

- 1) Citizens of the European Union and natural or legal persons residing or having

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their registered office in a Member State shall exercise their right of access to Agency documents other than those directly accessible, pursuant to Article 2(1) of Regulation 1049/2001.

- 2) Pursuant to Article 2(2) of Regulation 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 Agency documents other than those directly accessible, on the same terms as the beneficiaries referred to in Article 2(1) of Regulation 1049/2001.

Article 5 - Applications for access to Agency documents

- 1) Applications for access to a document, duly motivated, shall be submitted to the Agency via the Agency's website, by electronic mail, by post or by fax. The relevant contact details are listed in the annex to this Decision, may be updated periodically and are published in the Agency's website.
- 2) The Agency shall respond to applications within fifteen working days from the date of registration of the received application in the Agency log.
- 3) 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 any such extension must be notified to the applicant prior to expiry of the original deadline.
- 4) If an application is imprecise, as defined in Article 6(2) of Regulation 1049/2001, the Agency shall invite the applicant to provide additional information to clarify the application. The deadline for the Agency to respond to the application shall be fifteen working days from receiving the information necessary to identify the document(s) in question.

Article 6 – Receipt of applications

- 1) Where the document requested is directly accessible as defined in article 12 of Regulation 1049/2001 and Article 2 of this Decision, the applicant shall be notified of this, together with details of how to retrieve the document in question.
- 2) Applications relating to documents which are not directly accessible shall be acknowledged by the Agency pending an answer unless this answer can be sent by return post.
- 3) The acknowledgement of receipt and the answer shall be sent in writing, where appropriate, by electronic means.

Article 7 – Processing of applications

- 1) The Agency's document access coordinator, referred to in Article 13(2), shall

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decide on the application and inform the applicant of his/her decision.

- 2) Any decision to deny access to a document or part of a document shall state the reason for the refusal based on one of the exceptions listed in Article 4 of Regulation 1049/2001.
- 3) Any wholly or partly negative decision shall inform the applicant of his/her right to submit, within fifteen working days from receipt of the answer, a confirmatory application to the Agency, pursuant to Article 7 of this Decision. It shall also inform the applicant of the other remedies available to him or her.

Article 8 – Confirmatory applications

- 4) In the event of a total or partial refusal, the applicant may, within fifteen working days of receiving the Agency's reply, make a confirmative application asking the Agency to reconsider its position.
- 5) Failure by the Agency to reply within the prescribed time limit shall entitle the applicant to make a confirmatory application.

Article 9 - Processing of confirmatory applications

- 1) The Director decides on confirmatory applications. He/she shall be assisted in this task by the document access coordinator, referred to in Article 13(2) and, if necessary, the Agency unit which produced or received the document in question. If the document was produced by the Board of Regulators, the Director may consult the Chairman of that Board.
- 2) The decision shall be notified to the applicant in writing, where appropriate by electronic means, within fifteen working days from the date of registration of the received confirmatory application in the Agency log.
- 3) The decision shall also inform the applicant of his/her right to bring an action before the Board of Appeal of the Agency and in case the Board of Appeal confirms the Agency's decision to reject the request for access, to the Court of First Instance or, if appropriate, to lodge a complaint with the European Ombudsman.

Article 10 — Third-party documents

- 1) Where the Agency receives an application for access to a document which it holds but which originates from a third party, the Agency's document access coordinator referred to in Article 13(2), shall check whether one of the exceptions provided for under article 4 of Regulation 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 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 the document requested has already been disclosed either by its author or under Regulation 1049/2001 or similar provisions.
- 4) Unless the document originates from a Member State or a regulatory authority referred to in Article 35 of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and Article 39 of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas, the Agency shall grant the application without consulting the third-party author where 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 1049/2001.
- 5) 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 or a regulatory authority referred to in paragraph 4), the Agency shall consult the originating authority and take account of its opinion.
- 6) The third party consulted shall be given a reasonable deadline for replying which shall allow the Agency to respect its own deadline to reply to the applicant. In the absence of an answer within the prescribed period, or in those cases where the third party is untraceable or unidentifiable, the Agency shall reach a decision in accordance with the criteria set out in Article 4 of Regulation 1049/2001, taking into account the legitimate interests of the third party on the basis of the information at his or her disposal.
- 7) 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 day period and shall draw his or her attention to the remedies available to him or her to oppose disclosure.

Article 11 — Exercise of the right of access

- 1) Documents shall be sent by mail, fax or, if possible, by email. If documents are voluminous or difficult to handle, the applicant may be invited to consult the documents at the Agency's premises. This consultation shall be free of charge.
- 2) If the document has been published, the answer shall consist of the publication references or, for documents available on the Agency's website or other websites, the appropriate Uniform Resource Locator (URL).
- 3) Without prejudice to the Regulation in force relating to fees and charges payable to the Agency, if the volume of the documents requested exceeds twenty pages, the applicant may be charged a fee. This fee shall be set by the Director and published on the Agency's website. They shall not exceed a reasonable amount.

Article 12 – Annual reporting

Pursuant to article 17(1) of Regulation 1049/2001, a report shall be annexed to the

Agency's annual report including the number of cases in which the institution refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register.

Article 13 - Internal organisation

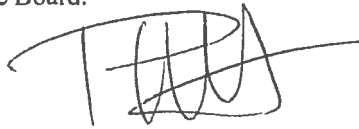
- 1) The Director shall ensure coordination and uniform implementation of these rules by the Agency staff. To this end, he/she shall issue the necessary notices, and provide advice and guidelines
- 2) The Director shall designate a suitably-qualified person responsible for assessing initial applications for documents, the "document access coordinator", and for preparing decisions by the Director with respect to confirmatory applications.

Article 14 — Entry into force

This Decision shall enter into force upon publication on the website of ACER.

Done at Brussels on 28 November 2010

For the Administrative Board:



Piotr Woźniak

Chairman of the ACER Administrative Board

ANNEX

[This Annex provides address details for applications for access to documents together with details of charges for the processing and dispatch of any large documents. This Annex does not form part of the decision and these details will be updated from time to time]

Addresses for submission of applications for access to documents held by the Agency for the Cooperation of Energy Regulators.

Applications shall be sent for the attention of the Document Access Coordinator by one of the methods below:

1 By post:

Document Access Co-ordinator
Agency for the Cooperation of Energy Regulators
Trg Republike 3
1000 Ljubljana, Slovenia

2 By electronic mail:

documents-access@acer.europa.eu

3 Via the Agency's website:

http://www.acer.europa.eu/portal/page/portal/ACER_HOME

4 By fax:

+ 386 (0) 82053 413

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

EUR 0.15 per page.