

European Maritime Safety Agency

DECISION OF EMSA ADMINISTRATIVE BOARD CONCERNING THE ARRANGEMENTS TO BE APPLIED BY THE AGENCY FOR PUBLIC ACCESS TO DOCUMENTS

The EMSA Administrative Board

Having regard to Regulation (EC) N° 1406/2002⁴ of the European Parliament and of the Council of 27 June 2002 establishing a European Maritime Safety Agency, as amended by Regulation (EC) No 1644/2003 of the European Parliament and of the Council of 22 July 2003 amending Regulation (EC) No 1406/2002⁵ hereafter referred to as the “EMSA Regulation”, and in particular to article 4 3 thereof,

- Whereas it is necessary to establish rules for implementing Regulation (EC) N° 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”

Has adopted this Decision:

Article 1 - applicability and scope

- 1 This Decision prescribes the arrangements under which the public shall be granted access to documents held by the Agency.
2. Citizens of the European Union and natural or legal persons residing or having their registered office in a Member State shall exercise their right of access to Agency documents pursuant to Article 2(1) of Regulation 1049/2001.
3. 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 on the same terms as the beneficiaries referred to in Article 2(1) of Regulation 1049/2001

Article 2 - applications for access to Agency documents

1. Applications for access to a document shall be sent 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 and may be updated periodically

⁴ Official Journal L 208 , 05/08/2002 P. 0001 - 0009

⁵ Official Journal L 245 , 29/09/2003 P. 0010 - 0012

2. The Agency shall respond to initial and confirmatory applications within fifteen 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 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 in question.

5. 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. The applicant shall be informed of the remedies available to him or her.

6. 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 3 - processing of initial applications

1. Where the document requested is directly accessible as defined in article 12 of Regulation 1049/2001 and article 8 of this Decision, the applicant shall be notified as such 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.

4. The Agency's document access co-ordinator shall inform the applicant of his/her decision with respect to the initial application.

5. Any wholly or partly negative decision shall inform the applicant of his right to submit, within fifteen working days from receipt of the answer, a confirmatory application to the Agency.

6. 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.

7. 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

The Executive Director is authorised to take decisions regarding confirmatory applications. He/she shall be assisted in this task by the document access co-ordinator and, if necessary, the Agency unit which produced or received the document in question

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

Article 5 – 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 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, 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, the Agency shall consult the originating authority

6. The third party consulted shall be given a deadline for reply 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

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 day period and shall draw his or her attention to the remedies available to him or her 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 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 Agency⁶, if the volume of the documents requested exceeds twenty pages, the applicant may be charged a fee. This fee shall be set by the Executive Director. Such charges are published in the annex to this Decision. They shall not exceed a reasonable amount

Article 7 – 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 cover the following categories of Agency documents:
 - 0- home
 - 1- regulation 1049/2001 and internal rules for access to documents
 - 2- legal framework and organ. chart of emsa
 - 3- work prog/plan and budgets of emsa (incl. list of contracts)
 - 4- annual and special reports
 - 5- activities of the Board (agenda, docs, minutes)
 - 6- rules of procedure of emsa (good behaviour, data protection)
 - 7- recruitment and vacancies
 - 8- press releases and articles
 - 9- photos, videos and newsletters
 - 10- background incl statistics on requests
3. A help page shall be provided to assist the public in finding specific documents.
4. 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.
5. For documents which are directly accessible the register shall include a hyperlink to the document in question.
6. For documents which are not directly accessible, the register will provide details of how to request access.

⁶ When adopted by the EMSA Administrative Board

Article 8 - documents directly accessible to the public

1. The following documents shall be made directly accessible by electronic means:

- (a) all adopted EU legislation related to the Agency's mandate
- (b) all EMSA Administrative Board Meetings decisions and minutes
- (c) The annual budget of EMSA
- (d) The list of contacts in EMSA
- (e) all press releases or other publications made by EMSA

2. As far as possible the following documents shall be made directly accessible by electronic means:

- (a) documents originating from third parties which have already been disclosed by their author or with his or her consent;
- (b) documents already disclosed following a previous application.

3. The Executive Director may add to the list of documents in paragraph 2 as appropriate

Article 9 internal organisation

1. The Executive Director shall ensure coordination and uniform implementation of these rules by the Agency staff. To this end, he shall provide all the necessary advice and guidelines

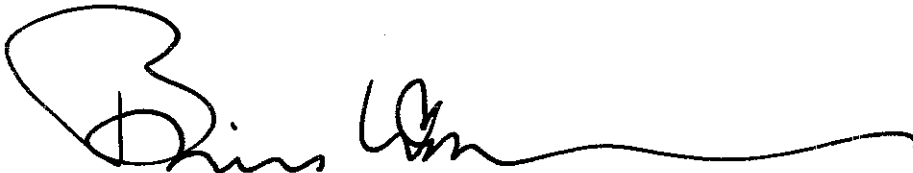
2. The Executive Director shall designate a suitably-qualified person responsible for assessing initial applications for documents ("document access coordinator") and for preparing decisions by the Executive Director with respect to confirmatory applications

Article 10 – entry into force

This Decision shall enter into force upon publication the EMSA Administrative Board meeting Decisions and Minutes during which it was adopted.

Done at Brussels on 25 June 2004

For the Administrative Board:

A handwritten signature in black ink, appearing to read 'Brian Wadsworth', with a long, sweeping horizontal line extending to the right.

Brian Wadsworth

Chairman of the EMSA Administrative Board

ANNEX

[This annex provides address details for applications for access to documents together with details of charges for the processing and despatch of any large documents. Given that these shall change from time to time and have not been finalised at this stage, it is proposed to keep this separate from the decision itself so that it can be updated easily as required]

Addresses for submission of applications for access to documents held by the European Maritime Safety Agency

Applications shall be sent for the attention of the Document Access Co-ordinator by one of the methods below:

1. By post

Document Access Co-ordinator
European Maritime Safety Agency
Rue de Genève 12
B-1049 Brussels
Belgium

2. By electronic mail:

documents@emsa.eu.int

3. Via the Agency's website:

www.emsa.eu.int

4. By fax:

+32 (0)2 298 48 91

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

EUR 0 10 per page plus carriage costs