

Decision No 2022-090 of the Management Board of the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice (hereinafter “eu-LISA” or “the Agency”)

Subject: Practical arrangements regarding public access to the documents held by the Agency

THE MANAGEMENT BOARD OF EU-LISA,

HAVING REGARD to Regulation (EU) 2018/1726 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for the Operational Management of Large-Scale IT Systems in the Area of Freedom, Security and Justice¹, and amending Regulation (EC) No 1987/2006 and Council Decision 2007/533/JHA and repealing Regulation (EU) No 1077/2011, (hereinafter referred to as the “eu-LISA Regulation”), and in particular Article 19(1)(dd), Article 24(3)(r) and Article 34 thereof;

HAVING REGARD to Regulation (EC) No 1049/2001 of 30 May 2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents² (hereinafter referred to as the “Regulation (EC) No 1049/2001”);

HAVING REGARD to Decision No 2012-026 of 28 June 2012 the Management Board of eu-LISA laying down practical arrangements regarding public access to the documents of the Agency (hereinafter referred to as the “Decision No 2012-026”);

HAVING REGARD the short guide for the EU administration on policies and practices to give effect to the right of public access to documents of 27 October 2021 of the European Ombudsman³ (hereinafter referred to as the “short guide for the EU administration”),

WHEREAS:

- (1) Article 1 of the Treaty on European Union (hereinafter referred to as “TEU”) enshrines the principle of openness, stating that decisions are taken as openly and as closely as possible to the citizen.
- (2) The concept of openness enables the administration to enjoy greater legitimacy and to be more effective and more accountable. It also contributes to strengthening the principles of democracy and respect for fundamental rights as laid down in Article 6 of the TEU, developed in Article 15(3) of the Treaty on the Functioning of the European Union (hereinafter referred to as “TFEU”), and in Article 42 of the Charter of Fundamental Rights of the European Union on access to documents.

¹ OJ L 295, 21.11.2018, p. 99–137.

² OJ L 145, 31.5.2001, p. 43-48.

³ SI/7/2021/DL.

- (3) The Regulation (EC) No 1049/2001 lays down the general principles and limits governing the right of access to European Parliament, Council and Commission documents.
- (4) In accordance with Article 34 of eu-LISA Regulation, the Agency is subject to the Regulation (EC) No 1049/2001 when handling applications for public access to documents held by it.
- (5) In principle, all documents should be accessible to the public. However, in accordance with the exceptions provided by the Regulation (EC) 1049/2001, certain public and private interests should be protected by way of exceptions. Furthermore, the Agency shall also take account of the principles in the EU legislation concerning the protection of personal data when assessing the applications it receives.
- (6) In order to safeguard the Agency's ability to carry out its tasks, special attention should be paid to the specific requirements of the Agency as a specialised body tasked with the operational management of the second-generation Schengen Information System (SIS II), the Visa Information System (VIS) and the European Asylum Dactyloscopy Database (Eurodac), the preparation, development or operational management of the Entry/Exit System (EES), DubliNet, the European Travel Information and Authorisation System (ETIAS) and other large-scale IT systems in the area of freedom, security and justice. Therefore, full account should be taken of the sensitive nature of the tasks carried out by the Agency. In any event, the successful and effective fulfilling of the objectives and tasks of the Agency should be taken into due consideration.
- (7) A two-stage administrative procedure applies, with the additional possibility of court proceedings or complaints to the European Ombudsman.
- (8) The Agency takes the measures necessary to inform the public of the new provisions in force and to train its staff to assist citizens exercising their rights under the Regulation (EC) No 1049/2001.
- (9) The principle of sincere cooperation governs the relations between the European Union Member States and the European Union bodies and notably in the context of consultation, prior agreement or consent.
- (10) The Agency follows the short guide for the EU administration, which sets the policies and practices that the EU institutions, bodies, offices and agencies should have in place in order to fully implement their obligations to give effect to the fundamental right of public access to documents.
- (11) The changes introduced in the Agency's organisational structure and the experience acquired since the adoption of the Decision No 2012-026 require the revision of the existing rules.

HAS DECIDED AS FOLLOWS:

Chapter I

General provisions

Article 1

Purpose

The purpose of this Decision is to lay down the practical arrangements for the application of the Regulation (EC) No 1049/2001 as regards documents held by the Agency, in such a way as to ensure good administrative practices and high standards of public access to documents, taking into account the specific nature of the Agency and its mandate.

Further details concerning the allocation of work within the Agency pursuant to this Decision are adopted by a decision of the Executive Director.

Article 2

Definitions

For the purpose of this Decision:

- a) "PAD Coordinator" means the Senior Legal Officer(s) and Legal Officer(s) working in the Legal Sector of the Corporate Services Department⁴, performing tasks of a cross-divisional nature, in charge of processing public access to documents applications and coordinating the internal network of PAD Contact persons.
- b) "Document" means any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audio-visual recording) concerning a matter relating to the policies, activities and decisions falling within the Agency's sphere of responsibility. Personal notes, sketches, notations, private emails and other items of a similar nature are not deemed documents.
- c) "PAD Contact person" means a person appointed by a decision of the Executive Director to be part of a cross-divisional network within the Agency, coordinated by the PAD Coordinator. They are in charge of handling public access to documents applications in their thematic field under the joint instructions of their Head of Unit and the PAD Coordinator.

Article 3

Beneficiaries

1. Any citizen of the European Union or of a Schengen Associated Country and any natural or legal person residing or having its registered office in an EU Member State or in a Schengen Associated Country, has the right of access to documents as set out in Article 4 subject to the principles, conditions and limits defined by the Regulation (EC) No 1049/2001 and this Decision.
2. On a case-by-case decision, the Agency may, subject to the same principles, conditions and limits set forth in the Regulation (EC) No 1049/2001, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State or in a Schengen Associated Country.

Article 4

Scope

This Decision applies to all documents drawn up or received by the Agency, and in its possession, concerning a matter related to the policies, activities and decisions falling within its area of responsibility.

Article 5

Applications

1. The right of access to documents is exercised through an application without the obligation to state any reasons. The right of access includes the rights of consultation and/or reproduction, and information as to the documents' existence and content.
2. Applications for access to documents are made in writing, preferably in electronic form. They are addressed to the email address: PAD@EULISA.EUROPA.EU. Applications

⁴ In case of reorganisation of the Agency, reference is made to the Senior Legal Officer(s) and Legal Officer(s) working in the Agency.

submitted by post are addressed to eu-LISA's headquarters in Tallinn (Estonia): Vesilennuki 5, 10415 Tallinn, Estonia.

3. All initial applications must be accompanied by an identity document or, in the case of legal persons, the proof of registered office along with the proof of the link between the individual presenting the application and the legal person.
4. All applications must enable the Agency to identify the requested document(s). If an application is imprecise, the Agency invites the applicant to provide additional information to clarify the application.
5. In the event of an application relating to a very long document or to a very large number of documents, the Agency may confer with the applicant informally, with a view to finding a fair solution.

Article 6

Registration and deadline

1. Only applications presented in compliance with Article 5 are registered and further processed.
2. As soon as the application is registered, an acknowledgement of receipt is sent to the applicant.
3. Within fifteen (15) working days, the Agency notifies the applicant of its decision. This deadline runs from the next working day following registration.
4. In case of imprecise applications, referred to in Article 5(4), the deadline runs from the next working day following the reception by the Agency of the additional information necessary to identify the document(s) in question.
5. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the deadline may be extended by fifteen (15) working days, provided that the applicant is notified in advance and that the reasons are given.
6. Failure by the Agency to notify the applicant of its decision to an initial application within the prescribed deadline entitles the applicant to make a confirmatory application. Failure to notify the applicant of its decision regarding a confirmatory application entitles the applicant to institute court proceedings against the Agency and/or to make a complaint to the European Ombudsman.

Chapter II

Procedure

Article 7

Processing of initial applications

1. For the processing of initial applications, the Executive Director assigns the responsibility to the PAD Coordinator in compliance with this Decision and in compliance with the provisions of the decision of the Executive Director referred to in Article 1.
2. The PAD Coordinator makes a pre-screening of the initial application to assess whether it can be handled without consultations. In the case of simple requests, the PAD

Coordinator proceeds without consultation to grant full access, partial access only or to refuse access to the document(s) requested. In this case, the PAD Contact Person is informed of the action taken.

3. Where consultations are needed, the PAD Coordinator forwards the initial application to the PAD Contact Person. The latter is fully responsible for handling the request in accordance with this Decision⁵.
4. Upon receipt of an application, the PAD Contact Person, in cooperation with the document owner and/or author, immediately assesses whether the work to be performed is complex or refers to a very long document or a very large number of documents, or whether further clarification of the application is required.
5. In case of a request for a very long document or a very large number of documents, the PAD Contact Person, together with the PAD Coordinator, confers with the applicant to find a fair solution in accordance with Article 5(5).
6. In case of a complex request or a request for a very long document or a very large number of documents, the PAD Contact Person may ask the PAD Coordinator to notify the applicant of the extension of the time limit by fifteen (15) working days providing the necessary justifications.
7. In case of an imprecise application, the PAD Coordinator and the PAD Contact Person notify the applicant to clarify it by providing additional information, in accordance with Article 5(4).
8. Within eight (8) working days from the day that the PAD Coordinator forwards the application to the PAD Contact Person, the latter informs the PAD Coordinator in writing of his/her assessment on whether to:
 - a) Grant full access;
 - b) Grant partial access only – The PAD Contact Person indicates the exact excerpts in the requested document(s) which in his/her view should not be disclosed, along with the justifications;
 - c) Refuse access – The PAD Contact Person indicates the justifications.
9. The PAD Coordinator, together with the PAD Contact Person, verifies that the reasons provided are correct and in compliance with the exceptions laid down in Article 4 of the Regulation.
10. The PAD Contact Person then prepares, in a non-editable format, the document(s) for which partial access only is to be granted by blanking out the excerpts not to be disclosed and providing the necessary justifications.
11. The PAD Coordinator notifies in writing the applicant of the decision. In case of:
 - a) full access: the notification is accompanied by the requested document(s);
 - b) partial access only: the notification is accompanied by the documents edited by the PAD Contact Person with the non-disclosed parts blanked out and the corresponding justifications pursuant to the exceptions laid down in Article 4 of the Regulation;

⁵ For example, if an applicant asks to have access to a document and it appears that this document may impact the commercial interest of a contractor of the Agency, the PAD Contact Person should provide an assessment of the commercial interests at stake.

- c) refusal: the notification provides a justification pursuant to the exceptions laid down in Article 4 of the Regulation (EC) No 1049/2001.
12. In cases of partial access only or refusal, the notification contains information on the ways of redress.
13. The reply for the initial applications is signed by the Head of Corporate Services Department of the Agency.

Article 8

Processing of confirmatory applications

1. The provisions related to initial applications, mentioned in Article 7, apply *mutatis mutandis* to confirmatory applications.
2. A PAD Coordinator, different from the PAD Coordinator that handled the initial application, is responsible for examining the confirmatory application. The examination shall be objective and independent from the assessment conducted by the PAD Coordinator responsible for handling the initial application. The provisions set out in Article 6 on the deadline and on its extension apply.
3. In the event that the PAD Coordinator proposes to disclose a document or excerpts of a document to which access was refused or for which only partial access was granted after an initial application, it will inform the PAD Contact Person.
4. The reply to confirmatory applications is signed by the Executive Director of the Agency.

Article 9

Form of access

1. Documents the access to which has been granted are sent preferably by email. If documents are voluminous or difficult to handle, the applicant may be invited to consult the documents at the Agency's Headquarters; that consultation is free of charge. The Agency does not reimburse any costs (for instance, travel expenses) associated with that consultation.
2. If the document is already public, the notification consists of the publication reference and/or the place where the document is available.
3. If the volume of the documents requested exceeds fifty (50) pages in total, the applicant may be asked to pay a fee in accordance with the Regulation (EC) No 1049/2001. The amount of the fee and its processing are decided by decision of the Executive Director. The applicant is informed by the PAD Coordinator of the amount due as soon as the number of pages is calculated by the PAD Contact Person.
4. The Agency may postpone the disclosure of the document(s) until the fee has been paid by the applicant and received by the Agency.
5. Documents are supplied in an existing version or format.

Article 10

Documents originating from a third party

1. In case of an application for access to a document held by the Agency but which originates fully or partially from a third party (e.g. EU Member State, EU body, Third Country

authority), the PAD Contact Person consults the third party in accordance with Article 4(4) of the Regulation (EC) No 1049/2001, unless it is clear that the document must or must not be granted.

2. The document may be granted without consulting the third party, *inter alia*, when:
 - a) the document requested has already been disclosed either by its author or under the Regulation or similar provisions; or
 - b) the respective third party has given its prior agreement for full access.
3. When consulting the third party, the Agency sets a time limit not longer than five (5) working days in which the third party must provide a reply. In the absence of an answer by the third party within the prescribed period, or if the third party is untraceable, the Agency proceeds with the application in accordance with Article 4 of the Regulation (EC) No 1049/2001.
4. If the Agency intends to grant access to a document originating from a third party against the will of this third party, it informs the third party concerned on the grounds for the disclosure of the document.

Article 11

Treatment of sensitive documents

1. Sensitive documents are documents, classified as “TOP SECRET”, “SECRET”, “CONFIDENTIAL”, OR “RESTRICTED”, which protect the essential interests of the European Union or one or more of its Member States in the areas covered by Article 4(1)(a) of the Regulation (EC) No 1049/2001, notably public security, defence and military matters.
2. Applications for access to sensitive documents under the procedures laid down in this Decision are handled only by staff members assigned to do so. Staff members assigned must additionally be among those that fulfil the prerequisites of accessing sensitive documents pursuant to the Agency’s internal security rules.
3. Access to a document the content of which partially contains sensitive information may be granted by the Agency provided that the parts containing the sensitive information have been blanked out.
4. Reasons for granting partial access only or refusing access to a sensitive document are given on the basis of the exceptions listed in Article 4 of the Regulation. If it is proven that access to the requested document cannot be refused on the basis of these exceptions, the staff member handling the application informs the Security Officer of the Agency that the document is to be declassified by the Agency. The Security Officer is responsible for this process.

Article 12

Documents held by the EU Member States

Documents originating from the Agency held by the EU Member States are dealt with in accordance with Article 5 of the Regulation (EC) No 1049/2001.

Chapter III

Final provisions

Article 13

PAD Coordinator and PAD Contact Persons

1. As per Article 2 of this Decision, PAD Coordinator means the person(s) embedded within the Legal Sector of the Corporate Services Department⁶, performing tasks of a cross-divisional nature, in charge of processing public access to documents applications and coordinating the internal network of PAD Contact Persons.
2. For public access to documents matters, PAD Contact Persons take instructions from the PAD Coordinator. Once a year, the PAD Coordinator informs each PAD Contact Person's Reporting Officer about his/her performance when carrying out duties related to public access to documents.
3. The Executive Director appoints the PAD Contact Persons among the Agency's statutory staff, upon proposal of the management.
4. The PAD Contact Persons must take a compulsory training on access to documents provided by the PAD Coordinator or any other entity⁷.

Article 14

Information

The Agency informs the public on its website of the rights they enjoy under the Regulation (EC) No 1049/2001 and in accordance with this Decision.

Article 15

Reproduction of documents

This Decision is without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit disclosed documents.

Article 16

Annual Report

The Agency includes in its Annual Report the number of applications handled during the previous year, the number of cases in which it refused to grant access to documents, together with the reasons for such refusals and the number of sensitive documents not recorded in the public register

Article 17

Processing of personal data

Personal data transmitted by the applicant on his/her identity are processed in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC⁸.

⁶ In case of reorganisation of the Agency, reference is made to the Senior Legal Officer(s) and Legal Officer(s) working in the Agency.

⁷ For example, contractors chosen by the PAD Coordinator.

⁸ OJ L 295, 21.11.2018, p. 39-98.

Article 18

Requests for information

The PAD Coordinator forwards to the EULISA INFO functional mailbox (info@eulisa.europa.eu) the requests which are not applications for public access to documents but requests for information.

Article 19

Repeal

The Decision No 2012-026 is hereby repealed.

Article 20

Entry into force

This Decision enters into force on the day of its adoption by the Management Board.

Mr Zsolt Szolnoki
Chairperson of the Management Board