



C/2024/4431

11.7.2024

**DECISION OF THE HIGH REPRESENTATIVE OF THE UNION OR FOREIGN AFFAIRS AND
SECURITY POLICY**

of 23 May 2024

on the rules regarding access to documents

(C/2024/4431)

THE HIGH REPRESENTATIVE OF THE UNION FOR FOREIGN AFFAIRS AND SECURITY POLICY,

Having regard to Article 11(1) of the Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service ⁽¹⁾,

Whereas:

- (1) In accordance with Article 11(1) of Decision 2010/427/EU, the EEAS shall apply the rules laid down in Regulation (EC) No 1049/2001 of the European Parliament and the Council ⁽²⁾, and the High Representative shall decide on the implementing rules for the EEAS.
- (2) Pursuant to Article 11 of Regulation (EC) No 1049/2001, the EEAS has established a publicly accessible register of documents.
- (3) In order to reflect the evolution of the transparency policy and practices of the EEAS, it is appropriate to update Decision PROC HR(2011) 012 of the High Representative of the Union for Foreign Affairs and Security Policy ⁽³⁾ by repealing and replacing it with this Decision,

HAS DECIDED AS FOLLOWS:

Article 1

Scope

This Decision sets out rules for the implementation by the EEAS of Regulation (EC) No 1049/2001 (hereinafter 'the Regulation').

Article 2

Submitting an application

1. An application for access to documents addressed to the EEAS shall be submitted in written form, through the EEAS website, by email to the EEAS Transparency Team or by post to the Access to Documents Correspondent, European External Action Service, Rond Point Schuman 9A Brussels 1040, Belgium.
2. The application shall be made in a sufficiently precise manner in order to enable the EEAS to identify the requested documents and to process the application within the time limits of the Regulation.

⁽¹⁾ OJ L 201, 3.8.2010, p. 30.

⁽²⁾ 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, 31.5.2001, p. 43).

⁽³⁾ Decision of the High Representative of the Union for Foreign Affairs and Security Policy of 19 July 2011 on the rules regarding access to documents (OJ C 243, 20.8.2011, p. 16).

3. In case of applications not sufficiently precise or too broad in their scope, the EEAS shall promptly contact the applicant with a view to clarifying the request or limiting its scope in line with Article 6(2) and 6(3) of the Regulation. In the absence of any reply from the applicant within 10 working days, the EEAS shall contact again the applicant granting him other 5 additional working days to clarify or limit the scope of the request so as to allow the EEAS to handle it in an efficient manner. If the applicant fails to provide a clarification or a limitation of the scope, the application shall be deemed rejected.

4. As soon as the application is registered, the EEAS Access to Documents Correspondent shall send an acknowledgement of receipt to the applicant.

5. Personal data of applicants shall be processed in line with applicable personal data protection rules ⁽⁴⁾.

Article 3

Time limits

1. All applications shall be processed under the conditions and within the deadlines set by the Regulation.

2. In exceptional cases, as set out in Article 7(3) and Article 8(2) of the Regulation, the deadlines may be extended by fifteen working days, in particular:

- (a) in the case of applications which are complex or involve a large volume of data or documents,
- (b) if a request requires consultation of a Union institution, body or office, a Member State, or a Union delegation; or
- (c) if consultation of a third party is required.

The applicant shall be informed of any such extension and of the reasons for it.

Article 4

Handling of replies

1. Answers to initial applications are handled by the Transparency Team and signed by the EEAS Access to Documents Correspondent.

2. Answers to confirmatory applications are signed by the Secretary-General of the EEAS after considering the advice of the Access to Documents Correspondent. The Secretary-General may delegate this power inside the EEAS.

Article 5

Negative response

If the answer to an application is negative in full or in part, it shall state the reasons for the refusal based on one of the exceptions set out in Article 4 of the Regulation. Answers to an initial application shall inform the applicant of the right to submit a confirmatory application. Answers to a confirmatory application shall inform the applicant of the available remedies, namely instituting court proceedings against the EEAS under the conditions laid down in Article 263 TFEU and/or making a complaint to the European Ombudsman under the conditions laid down in Article 228 TFEU.

⁽⁴⁾ 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/EC (OJ L 295, 21.11.2018, p. 39).

*Article 6***Third party documents held by the EEAS**

1. Where the EEAS receives an application for access to a document which it holds, but which originates from a third party, the third party shall be consulted unless it is clear that the document shall or shall not be disclosed, in light of the exceptions set out in the Regulation.
2. Access to the document shall be granted without consultation of the third party if the document has already been made public by its author, has been already released by the EEAS, or if it is clear that the disclosure, or partial disclosure, of its content would obviously not affect any of the interests referred to in Article 4 of the Regulation.
3. The third party must always be consulted if the document is covered by Article 9 of the Regulation, or if the document originates from a Member State and the Member State has requested the EEAS not to disclose the document without its prior agreement in accordance with Article 4(5) of the Regulation. Such a request by a Member State shall be made in writing.
4. The third party shall be consulted in writing and be given a reasonable time limit to reply, taking into account the time limits set out in Article 3 of this Decision. The third party shall give its opinion in writing.
5. In the absence of a reply from the third party within the time limit, or if the third party is unidentifiable or untraceable, the EEAS shall decide on the application in light of the exceptions set out in the Regulation, taking into account the legitimate interests of the third party on the basis of the information at its disposal.
6. If the EEAS intends to give access to a document against the explicit opinion of the third party, it shall inform the third party of its intention to disclose the document within the time limit applicable under the Regulation.

*Article 7***Consultation of the EEAS**

1. Requests for consultation of the EEAS by a Member State or another institution, body, office or agency of the Union that has received an application for a document in its possession but which originates from the EEAS shall be submitted to the EEAS Transparency Team or Access to Documents Correspondent by post to European External Action Service, Rond Point Schuman 9A, Brussels 1040, Belgium, or by email to ACCESS-TO-DOCUMENTS@eeas.europa.eu.
2. The EEAS shall give its opinion promptly, taking into account any time limit applicable for providing a reply, and at the latest within five working days.

*Article 8***Classified documents**

1. Where an application for access to a document concerns a document within the scope of Article 9 of the Regulation or another document classified under the EEAS security rules, it shall be handled by staff members authorised to acquaint themselves with the document.
2. Reasons shall be given on the basis of the exceptions listed in Article 4 of the Regulation for any decision refusing access to all or part of a classified document. If the requested document cannot be refused on the basis of those exceptions, the official handling the application shall ensure that the document is de-classified before it is sent to the applicant.

*Article 9***Modalities of access**

1. Documents to which access is to be granted shall be sent by post or email. If the requested documents are voluminous or difficult to handle, the applicant may be invited to consult them where they are held. Such consultation shall be free of charge.
2. If a document has been already released by the EEAS, the answer may consist in informing the applicant how to obtain the requested document, such as providing the publication references or indicating the web address where it is available.
3. If the volume of the copies of documents to be sent by post exceeds 20 pages, the applicant may be charged a fee of EUR 0,10 per page, plus shipping costs. The charges for other media shall be decided on a case by case basis, but shall not exceed a reasonable amount.

*Article 10***EEAS Public Register**

1. Documents to which access is granted following an application under the Regulation shall be published in the EEAS public register. The register shall be accessible in electronic form.
2. Documents which qualify as 'sensitive' pursuant to Article 9(3) of the Regulation shall be recorded in the register only with the consent of the originator.

*Article 11***Reporting**

Pursuant to Article 17(1) of the Regulation, the EEAS shall publish annually a report including the number of cases in which the EEAS refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register.

*Article 12***Repealing of Decision PROC HR(2011) 012**

This Decision repeals and replaces Decision PROC HR(2011) 012.

*Article 13***Effect**

The Decision shall enter into force on the day following its signature.

Done at Brussels, 23 May 2024.

Josep BORRELL FONTELLES
High Representative
of the Union for Foreign Affairs and Security Policy