



Decision No 8/2020

of 24 April 2020

of the Management Board

laying down the rules for applying Regulation (EC) 1049/2001 with regard to European Labour Authority documents

THE MANAGEMENT BOARD OF THE EUROPEAN LABOUR AUTHORITY,

Having regard to the Treaty on the Functioning of the European Union (hereinafter “TFEU”),¹ in particular Article 15(3) thereof;

Having regard to Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344² (hereinafter “*the Founding Regulation*” and “*the Authority*”), in particular Article 36(1) thereof;

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 documents (hereinafter “*Regulation (EC) No 1049/2001*”);³

Having regard to the Decision No 1/2019 of 17 October 2019 of the Management Board on the Rules of Procedure of the Management Board of the European Labour Authority⁴ (hereinafter “*Rules of Procedure*”), in particular Article 14 and Article 15 thereof;

Whereas:

1. Article 36(1) of the Founding Regulation foresees that Regulation (EC) No 1049/2001 shall apply to documents held by the Authority and the Authority shall adopt detailed rules on its application within six months of its first meeting.

¹ Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47–390.

² Regulation (EU) 2019/1149 of the European Parliament and of the Council of 20 June 2019 establishing a European Labour Authority, amending Regulations (EC) No 883/2004, (EU) No 492/2011, and (EU) 2016/589 and repealing Decision (EU) 2016/344 (Text with relevance for the EEA and for Switzerland), PE/49/2019/REV/1, OJ L 186, 11.7.2019, p. 21–56.

³ 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. 43–48.

⁴ European Labour Authority, Decision No 1/2019 of 17 October 2019 of the Management Board on the Rules of Procedure of the Management Board of the European Labour Authority, ELA/MB/2019/004 REV1.

2. In principle, all documents should be accessible to the public. However, certain public and private interests are to be protected by way of exceptions, where necessary, and, in particular, the protection of personal data should be taken into account.
3. The deliberations considered confidential pursuant to Article 20(2) of the Founding Regulation should be treated in accordance with the Article 14(3) of the Rules of Procedure.
4. In order to safeguard the ability to carry out its tasks, the rules must reflect the specific requirements of the Authority. It should take full account of sensitive operations carried out by the Authority, in particular in relation to concerted inspections or joint inspections, or its mediation function in the case of dispute between two or more Member States regarding individual cases of application of Union law in areas covered by the Founding Regulation.

HAS DECIDED AS FOLLOWS:

Article 1
Definitions

For the purpose of these rules:

- 1) “ELA document” or “document” shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to activities, policies and decisions falling within the Authority’s sphere of responsibility, and held by the Authority;
- 2) “Third party” shall mean any natural or legal person, or any entity outside the Authority, including Member States, other institutions, bodies and agencies of the European Union, international organizations, in particular International Labour Organisation, or authorities of third countries that apply the Union rules within the scope of the Founding Regulation;
- 3) “Union bodies“ means institutions, bodies, missions, offices and agencies set up by, or on the basis of, the Treaty on European Union⁵ and the TFEU;
- 4) “International organisation” means an organisation and its subordinate bodies governed by public international law, or any other body which is set by, or on the basis of, an agreement between two or more countries;
- 5) “Sensitive document” means any document originating from the European institutions, agencies established by them, from Member States, third countries or International Organisations, classified at least ‘confidential’ within the meaning of the Commission’s security rules, which protects essential interest of the Authority, the European Union, or one or more of the Member States in the areas covered by the Article 3(1)(a), notably public security, defence or military measures, international relations, the financial, monetary or economic policy of the European Union or a Member State.

⁵ Consolidated version of the Treaty on European Union, OJ C 326, 26.10.2012, p. 13–390.

Article 2
Beneficiaries and scope

- 1) Any citizen of the Union and natural or legal person residing or having their registered office in a Member State shall exercise their right of access to ELA documents in accordance with the provisions of Regulation (EC) No 1049/2001.
- 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 offices in a Member State shall enjoy the right of access to ELA documents on the same terms as beneficiaries referred to in Article 2(1) of Regulation (EC) No 1049/2001.
- 3) Pursuant to Article 2(3) of the Regulation (EC) No 1049/2001, the right to access concerns all documents held by the Authority, that is to say, documents drawn up or received by it and in its possession. However, sensitive documents shall be subject to a special treatment in accordance with Article 8.

Article 3
Exceptions

- 1) The Authority shall refuse access to a document where disclosure would undermine the protection of
 - a. the public interest as regards:
 - i. public security,
 - ii. defence and military matters,
 - iii. international relations,
 - iv. the financial, monetary or economic policy of the European Union or a Member State;
 - b. the privacy and integrity of the individual, in particular in accordance with the relevant European legislation regarding the protection of personal data.
- 2) The Authority shall refuse access to a document where disclosure would undermine the protection of:
 - i. commercial interests of a natural or legal person, including intellectual property,
 - ii. court, arbitration and dispute settlement proceedings and legal advice,
 - iii. the purpose of inspections, investigations and audits,unless there is an overriding public interest in disclosure.
- 3) Access to a document, drawn up for internal use or received by the Authority which relates to a matter where the decision has not been taken by the Authority, shall be refused if disclosure of the document would seriously

undermine the Authority's decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the Authority shall be refused, even after the decision has been taken if disclosure of the document would undermine the Authority's decision-making process, unless there is an overriding public interest in disclosure.

- 4) As regards documents originating in whole or in part from third parties the Authority shall consult them with the procedure established in Article 7 with a view to assessing whether any of the exceptions laid down in this Article are applicable, unless it is clear that the document shall or shall not be disclosed.
- 5) A Member State may request the Authority not to disclose a document originating from that Member State without its prior agreement.
- 6) If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.
- 7) The exceptions as laid down in this Article shall only apply to the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In case of documents covered by the exceptions relating to privacy or commercial interest and in case of sensitive documents, the exceptions may, if necessary continue to apply after this period.

Article 4

Applications for access to documents

- 1) Applications for access to documents which are not directly accessible via the Authority's website shall be sent by e-mail or post to the Authority in a sufficiently precise manner, in order to enable the Authority to identify the document(s) requested. The applicant is not obliged to state reasons for the application.
- 2) If an application is not sufficiently precise, the Authority shall invite the applicant to clarify the application and shall assist the applicant by doing so, for example, by providing information on the use of the public registers of documents.
- 3) In the event of an application relating to very long document or to a very large number of documents, the Authority may confer with the applicant informally, with a view to finding a fair solution.
- 4) The relevant contact details to which applications are to be sent shall be published on the website of the Authority, which may be updated periodically.

Article 5

Processing of initial applications

- 1) An acknowledgement of receipt shall be sent to the applicant in any written form, including electronic form, to the applicant, unless the answer to the application can be sent directly by return e-mail.

- 2) An application for access to document shall be handled promptly and no later than within 15 working days from registration of the application.
- 3) In the event of an imprecise application, the time-limit provided in paragraph 2 shall start to run from the day the Authority officially received the information necessary to identify the documents in question.
- 4) In the event of a complex application or an application relating to a very long document or to a very large number of documents, the time-limit provided in paragraph 2 may be extended by 15 working days provided that the applicant is notified in advance and that the detailed reasons are given.
- 5) The applicant shall be informed in a written reply, where appropriate by electronic means, of the results given to his/her application by a member of the staff of the Authority designated for this purpose.
- 6) The Authority either grants access to the document requested and provides access in accordance with Article 9, or, in a written reply, shall state the reasons for the total or partial refusal and shall inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 7.
- 7) In the event of total or partial refusal, the applicant may, within 15 working days of receiving the Authority's reply, make a confirmatory application asking the Authority to reconsider its position.
- 8) Failure by the institution to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

Article 6
Processing of confirmatory applications

- 1) A confirmatory application shall be handled promptly. Within 15 working days from the registration of such an application, the Executive Director of the Authority or the Authority's Management Board where the application concerns ELA documents originating from the Management Board shall either grant access to the document requested and provide access in accordance with Article 9, or in a written reply, state the reasons for the total and partial refusal.
- 2) The applicant shall be notified in writing of the decision, where appropriate by electronic means. In case of partial or total refusal, the Authority shall also inform the applicant of the remedies open to her or him, namely instituting court proceedings and/or lodging a complaint with the European Ombudsman.
- 3) 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 time limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant receives reasoned notice in advance.
- 4) Failure by the Authority to reply within the prescribed time-limit shall be considered to be a negative reply and shall entitle the applicant to the remedies mentioned in paragraph 2 of this Article.

Article 7

Consultations

- 1) When the Authority receives an initial or confirmatory application for access to document which it holds but which originates from a third party, it shall examine whether of the exceptions listed in this Decision apply.
- 2) If access to the documents must be refused based on Article 3 of this Decision, the Authority shall send the negative answer to the applicant without consulting the third party author.
- 3) The Authority shall grant 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, the examination of the request according to paragraph (1) does not give reason for a refusal and the disclosure or partial disclosure of the document's content manifestly does not affect one of the interests which the exception provided for in this Decision are intended to protect; or
 - c) the respective third party has agreed in writing with the disclosure.
- 4) In all the 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 Authority shall consult the originating authority.
- 5) The third party shall give its consultation within a period to allow the Authority to respect its 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 Authority shall take a decision in accordance with Article 3 of this Decision on the basis of the information at the Authority's disposal.
- 6) If the Authority intends to grant access to a document against the express recommendation of the third party without the prejudice to paragraph 5 of Article 3, it shall inform the third party of its intention to disclose the document after a period of 10 working days and shall draw their attention to the remedies available to them.

Article 8

Treatment of applications for access to sensitive documents

- 1) An application for access concerns sensitive documents shall be handled under the procedure laid down in Articles 5 and 6 only by those officials who are entitled to acquaint themselves with those documents.
- 2) Sensitive documents shall be released only with the consent of the originator.
- 3) Reasons shall be given on the basis of the exceptions listed in Article 3 of this Decision for any decision refusing access to all or part of a sensitive document in a manner which does not harm the interests protected in Article 3 of this Decision.

Article 9

Exercise of the right of access

- 1) Documents shall preferably be sent electronically, unless specified otherwise or impractical.
- 2) The costs of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies. Copies of less than twenty pages and direct access in electronic form shall be free of charge.
- 3) If the document has been published by the Authority or third party concerned and it is easily accessible to the applicant, the Authority's answer shall consist of the publication references and/or the place where the document is available and where appropriate of its web address.

Article 10

Measures facilitating access to the documents

- 1) A public register of documents shall be established to allow citizens to exercise their rights under Regulation (EC) No 1049/2001. References to those documents shall be made in a manner which does not undermine the protection of the interests set out in Article 3.
- 2) The register shall contain the title of the document (in the languages in which it is available), its document number, other useful references and the date of its creation or adoption.
- 3) The Authority shall draw up a practical guide to inform the public of their rights under Regulation (EC) No 1049/2001. The guide shall be made available on the Authority's website.

Article 11

Documents directly accessible to the public

The Authority shall as far as possible make documents directly accessible in electronic form on its website.

Article 12

Internal organisation

The Executive Director of the Authority shall adopt a decision outlining the internal procedure for the handling of public access requests.

Article 13

Entry into force

These rules shall enter into force on the day following the date of its adoption.

Done by written procedure
Brussels, 24 April 2020
For the Management Board

Tom BEVERS
Chairperson of the Management Board