

Making the railway system
work better for society.

ANNEX

Arrangements to be applied by the Agency for public access to documents (Consolidated Version)

THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR RAILWAYS,

Having regard to Regulation (EC) N° 2016/796 of the European Parliament and of the Council of 11 May 2016 (on the European Union Agency for Railways¹ hereafter “the Agency”) and repealing Regulation (EC) No 881/2004 (hereinafter called “the Regulation”), and in particular to article 77 thereof, stating that 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 (EC) n° 1049/2001”), shall apply to the documents held by the Agency.

Whereas

- (1) According to the Regulation, the Management Board should all adopt practical measures for implementing Regulation (EC) n° 1049/2001;
- (2) The ‘Arrangements to be applied by the Agency for Public Access to Documents’ adopted on 28.10.2004 and amended on 17 November 2009 should be further amended to take into account the Regulation and in particular the transparency provisions for access to documents;

HAS DECIDED AS FOLLOWS:

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 (EC) n° 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 defined by the Executive director and may be updated periodically. Applications shall be made in one of the official languages of the Community.
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.

¹ OJ L 138 26.5.2016, p. 1-43

4. If an application is imprecise, 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 (EC) n° 1049/2001. The applicant shall be informed of the remedies available to him or her.
6. Pursuant to Article 17§1 of Regulation (EC) n° 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, and the reasons for such refusals.
7. The Executive Director shall report to the Management Board annually the list of all requests, their date as well as the decision taken in each case.

Article 3 – Processing of initial applications

1. Where the document requested is directly accessible as defined in Article 12 of Regulation (EC) n° 1049/2001 and Article 8 of this Decision, the applicant shall be notified 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 coordinator 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

1. The Executive Director is authorised to take decisions regarding confirmatory applications. He/she shall be assisted in this task by the document access coordinator 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 (EC) n° 1049/2001 applies.
2. If, after that examination, it is clear that access to the document must be refused under one of the exceptions provided for by Article 4 of Regulation (EC) n° 1049/2001, the Agency shall send a negative answer 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 (EC) n° 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 (EC) n° 1049/2001, taking into account the legitimate interests of the third party on the basis of the information at his or her disposal.

Article 5a –Request for opinion by the European Commission

The Agency shall request the opinion of the European Commission in writing prior to taking a decision to refuse or to grant full or partial access of the requested document on whether the disclosure would undermine the protection of court proceedings or the purpose of inspections, investigations and audits - including infringement procedures and EU pilot- and whether there is an overriding public interest in 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. If the volume of the documents requested exceeds twenty pages and are only available on paper copies, the applicant may be charged a fee of EUR 0.10 per page plus carriage costs. Copies of less than 20 pages shall be free of charge.

Article 7 – Measures facilitating access to documents

1. In order to make the right of access provided for in Regulation (EC) n° 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:
 - a) Documents listed in Article 37 of the Regulation;
 - b) Management Board documents;
 - c) Organisational chart and composition of working groups;
 - d) Internal rules;
 - e) Recruitment and vacancies;
 - f) Budgetary and financial documents;
 - g) Recommendations addressed by the Agency;
 - h) Opinions issued by the Agency;
 - i) Documents related to the consultation of social partners, rail freight customers and passengers organisations, as provided for in Articles 6 and 7 of the Regulation.
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 (if available, and in the languages in which it is available), its serial number, a brief description of the contents, indication of the author (Agency or third party), the date of its receipt, creation or adoption and the date of entry in the register.
5. For documents or series of documents which are directly accessible the register shall include a hyperlink to the document or the series of documents in question.
6. For documents which are not directly accessible, the register will provide details of how to request access.

Article 8 - Documents directly accessible to the public

1. The Agency shall publish on its website the following documents:
 - a) Recommendations addressed by the Agency
 - b) Opinions issued by the Agency
 - c) Studies conducted by the Agency
 - d) Reports issued by the Agency
 - e) Outcomes of impact assessments conducted by the Agency
2. The following documents shall be made directly accessible by electronic means:
 - a) The present Decision;
 - b) Declaration of interests of the members of the Agency's management and administrative structure listed in Article 46 of the Agency Regulation;
 - c) Management Board summary of decisions;
 - d) Vacancies;
 - e) Adopted budget;
 - f) Adopted Programming Document and Annual Report;
 - g) Documents related to the consultation of social partners, rail freight customers and passengers organisations, as provided for in Articles 6 and 7 of the Regulation;
 - h) All press releases or publications made by the Agency;
3. The Executive Director may decide to add documents to the list of documents in paragraph 2 as appropriate.
4. Before publishing the documents referred to in the present Article, the Agency, with the information available at that moment, shall check, including by seeking the opinion of the Commission, whether the documents to be published are protected by one of the reasons referred to in Regulation (EC) No 1049/2001. If this is the case the document shall not be published on its website. The Agency shall publish the document once it is no longer protected by one of the reasons established in that Regulation.

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, guidelines and internal procedures which may include provisions on conflict of interests and delegations within the Agency. In case there is a potential conflict of interest with the Executive Director, where appropriate, delegation for a decision on access may be given to a Head of another EU Agency.
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 take effect on the day following that of its adoption.

Done at Lille on 29-11-2016
For the Management Board

The Chairperson
Mats ANDERSSON

Annex : Addresses for submission of applications for access to documents held by the European Union
Agency for Railways

ANNEX

Addresses for submission of applications for access to documents held by the European Union Agency for Railways

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 Union Agency for Railways
120, rue Marc Lefrancq
F-59300 Valenciennes France

2. By electronic mail:

documentaccesscoordinator@era.europa.eu

3. By fax:

+33 3 27.33.40.65

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

EUR 0.10 per page plus carriage costs.