



Helsinki, 25 March 2009

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**DECISION ON THE IMPLEMENTATION OF REGULATION (EC)
NO 1049/2001 OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL REGARDING PUBLIC ACCESS TO
DOCUMENTS TO EUROPEAN PARLIAMENT, COUNCIL AND
COMMISSION DOCUMENTS**

(Document adopted by the Management Board on 23 April 2008 as amended by decision
ED/04/2009 of 25 March 2009)

THE MANAGEMENT BOARD OF THE EUROPEAN CHEMICALS AGENCY

Having regard to Article 118(1) and (3) of Regulation (EC) No 1907/2006 of the European Parliament and the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directive 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC,

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,

Whereas:

(1) Regulation (EC) No 1049/2001 has been made applicable to documents held by the European Chemicals Agency.

(2) It is necessary to establish rules for implementing Regulation (EC) No 1049/2001 which should be made available to the public,.

(3) These arrangements are without prejudice to Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, which contains rules that are directly applicable to documents held by the Agency containing environmental information, in particular the provisions of Title II of that Regulation of which due account should be taken.

(4) Due account should be taken of Articles 118(2) and 119 of Regulation (EC) No 1907/2006 providing protection to commercial interests of persons submitting information to the Agency as well as to the public interest in disclosure of information about chemicals, inter alia where urgent action is essential to protect human health, safety or the environment,

HAS ADOPTED THIS DECISION:

Article 1 *Scope*

This Decision prescribes the arrangements under which the public shall be granted access to documents held by the European Chemicals Agency (hereinafter, referred to as ‘the Agency’), without prejudice to Regulation (EC) No 1367/2006. This right of access

concerns documents held by the Agency, that is to say, documents drawn up or received by it and in its possession.

Article 2
Applications for access

1. Applications for access to a document shall be sent in writing to the Agency via the Agency's website, by electronic mail, by mail or by fax. The addresses to which applications are to be sent are listed in the Annex to this Decision. The Executive Director may decide to update the Annex as necessary.
2. The Agency shall answer initial and confirmatory access applications within fifteen working days from the date of registration of the application. If an application relates to a very long document or to a very large number of documents, the deadline may be extended by fifteen working days. Reasons must be given for any extension of the deadline and it must be notified to the applicant beforehand.
3. If an application is imprecise, as referred to in Article 6(2) of Regulation (EC) No 1049/2001, the Agency shall invite the applicant to provide additional information making it possible to identify the documents requested; the deadline for reply shall run only from the time when the Agency has received this information.
4. Any decision to refuse access partially or fully shall state the reason for the refusal and shall inform the applicant of the remedies available to him.

Article 3
Treatment of initial applications

1. As soon as the application is registered, an acknowledgement of receipt shall be sent to the applicant, unless the answer can be sent by return post.
2. The acknowledgement of receipt and the answer shall be sent in writing, where appropriate, by electronic means.
3. The applicant shall be informed of the response to his application by the Agency, or by the Registrar of the Board of Appeal where the application concerns procedural documents drawn up solely for the purposes of a specific appeal procedure and which are in the sole possession of the Board of Appeal.
4. Any decision to refuse access partially or fully shall inform the applicant of his right to submit, within fifteen working days from receipt of the decision, a confirmatory application to the Executive Director of the Agency, or to the Chairman of the Board of Appeal where the application concerns procedural documents drawn up solely for

the purposes of a specific appeal procedure and which are in the sole possession of the Board of Appeal.

5. Failure by the Agency to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

Article 4

Treatment of confirmatory applications

1. The Executive Director of the Agency shall take the decisions on confirmatory applications. However, where a confirmatory application concerns procedural documents drawn up solely for the purposes of a specific appeal procedure and which are in the sole possession of the Board of Appeal, the decision-making power is delegated to the Chairman of the Board of Appeal.
2. The decision shall be notified to the applicant in writing, where appropriate by electronic means, and shall inform him of his right to bring an action before the Court of First Instance or, if appropriate, to lodge a complaint with the European Ombudsman.

Article 5

Consultations

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) No 1049/2001 applies.
2. If, after that examination, the Agency considers that access to it must be refused in accordance with one of the exceptions provided for by Article 4 of Regulation (EC) No 1049/2001, the decision to refuse access shall be sent to the applicant without consultation of the third-party author.
3. Without prejudice to paragraph 6, the Agency shall grant the 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) it is clear that the disclosure, or partial disclosure, of its contents would obviously not affect one of the interests referred to in Article 4 of Regulation (EC) No 1049/2001.
4. In all other cases, the third-party author shall be consulted.

5. The third-party author consulted shall have a deadline for reply which shall be no shorter than five working days but must allow the Agency to abide by its own deadlines for reply. In the absence of an answer within the prescribed period, or if the third party is untraceable or not identifiable, the Agency shall decide in accordance with the rules on exceptions in Article 4 of Regulation (EC) No 1049/2001, taking into account the legitimate interests of the third party on the basis of the information at its 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 attention to the remedies available to him to oppose disclosure.
7. If an application for access concerns a document originating from a Member State, the Agency shall consult the originating authority where the Member State has requested the Agency not to disclose the document without its prior agreement, in accordance with Article 4(5) of Regulation (EC) No 1049/2001.

Article 6
Exercise of the right of access

1. Documents shall be sent by mail, fax or, if available, by electronic means. If documents are voluminous or difficult to handle, the applicant may be invited to consult the documents at the Agency's premises. This document consultation shall be free of charge.
2. If the document has been published, the answer shall consist of the publication references and/or the place where the document is available and/or its web address on the Agency's website.
3. If the volume of the copies to be sent by mail or fax exceeds twenty pages, the applicant may be levied a reasonable charge set out in the Annex to this Decision. The Executive Director may decide to update the Annex as necessary.

Article 7
Measures facilitating access to the documents

1. In order to make the right of access deriving from Regulation (EC) No 1049/2001 effective, the Agency shall provide access to a register of documents.
2. The register shall contain the title of the document, information of which language versions are available, its reference number and other useful references, an indication of its author and the date of its creation or adoption.

3. A help page shall inform the public how the document can be obtained. If the document is published, the registry shall contain a link to the original text.

Article 8
Documents directly accessible to the public

1. This Article applies only to documents drawn up or received after the date from which Regulation (EC) No 1049/2001 applies.
2. At least the following documents shall be made directly accessible by electronic means:
 - (a) the rules of procedure, work programme, multiannual work programme and general report of the Agency;
 - (b) other information to be made publicly available under Regulation (EC) No 1907/2006;
 - (c) the rules of procedure, final minutes and final opinions of the Agency Committees and the Forum for Exchange of Information on Enforcement in their non-confidential versions to the extent they are considered as public.
3. The following documents shall be provided on request and, as far as possible, made directly accessible by electronic means:
 - (a) documents adopted by the Management Board and decisions of the Board of Appeal in their non-confidential versions to the extent they are considered as public;
 - (b) documents originating from third parties which have already been disclosed by their author or with his consent;
 - (c) documents already disclosed following a previous application.

Article 9
Entry into force

This Decision shall enter into force on 1 June 2008.

Article 10
Publication

This Decision shall be published on the Agency's website.

ANNEX

ADDRESSES FOR SUBMISSION OF APPLICATIONS FOR ACCESS TO DOCUMENTS HELD BY THE EUROPEAN CHEMICALS AGENCY

Via Agency website: http://echa.europa.eu/about/contact_en.asp

By electronic mail: access-to-documents@echa.europa.eu

By mail: European Chemicals Agency (ECHA)
P.O. Box 400
FI-00121 Helsinki
Finland

By fax: + 358 9 6861 8940

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

Paper copies: EUR 0,10 per page plus carriage cost

Fax : EUR 0,20 per page

Annex last updated: 25 March 2009