

## EUROPEAN DEFENCE AGENCY

### DECISION N° 19/09

#### ADOPTING THE EDA POLICY ON PUBLIC ACCESS TO DOCUMENTS

##### THE CHIEF EXECUTIVE,

Having regard to Article 15 of the Treaty on the Functioning of the European Union,

Having regard to Council Decision (CFSP) 2015/1835 of 12 October 2015 defining the statute, seat and operational rules of the European Defence Agency (hereinafter referred to as “the Council Decision”),<sup>1</sup> notably Article 30 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, hereafter referred to as “Regulation 1049/2001”,<sup>2</sup>

Whereas :

- (1) The mission of the Agency is to support the Council and the Member States in their effort to improve the Union’s defence capabilities in the field of crisis management and to sustain the CSDP as it currently stands and as it develops in the future;
- (2) It is recognised that public access to documents is an essential component of the policy of transparency implemented by the European institutions, bodies and agencies;
- (3) It is necessary to adopt an internal policy to facilitate a better understanding and more efficient implementation of the principles set out under Regulation 1049/2001.

#### HAS DECIDED AS FOLLOWS:

##### Article 1 – Purpose and scope

1. This Decision set out the modalities under which members of the public shall be granted access to documents held by the European Defence Agency (“Agency”), in line with Regulation 1049/2001.
2. Any citizens of the Union, and any natural or legal persons residing or having their registered office in a Member State, may exercise their right of access to Agency documents pursuant to Article 2.1 of Regulation 1049/2001.
3. The Agency may, in line with Article 2.2 of Regulation 1049/2001, grant access under the same conditions to any natural or legal person not residing or not having a registered office in a Member State.

<sup>1</sup> OJ L 266, 13.10.2015, p.55.

<sup>2</sup> OJ L 145, 31.5.2011, p.43.

## EUROPEAN DEFENCE AGENCY

### DECISION N° 19/09

#### Article 2 – Definitions

In line with Regulation 1049/2001 and for and for the purpose of this Decision:

- (a) “*Application (for access to documents)*” means a request made by any citizen of the Union and any natural or legal person having its registered office in a Member State to have access to document(s) held by the Agency.
- (b) “*Applicant*” means the person or entity making the Application for access to document(s).
- (c) “*Document*” means 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 the policies, activities and decisions falling within the Agency’s sphere of responsibility.
- (d) “*Confirmatory Application*” means a request by the Applicant to the Agency for a reassessment of its decision to refuse totally or partially the access to the documents requested.
- (e) “*Third party*” means any natural or legal person, or any entity outside the Agency, including the Member States, other Union or non-EU institutions and bodies and third countries.

#### Article 3 – Roles and responsibilities

1. The Legal Office is responsible for the administrative and legal coordination of the Applications for access to documents, including:
  - (a) Receipt and registration of Applications;
  - (b) Sending of an Acknowledgment of receipt (AoR) without delay;
  - (c) Initial legal assessment of the Application and attribution to the relevant Directorate for processing;
  - (d) Drafting the final reply to the applicant on the basis of a feedback received by the relevant Directorate;
  - (e) Sending the final reply to the applicant;
  - (f) Maintaining a central Register of Applications and storage of all related documentation;
  - (g) Creation and update as necessary of an access to documents page on EDA’s public website;
  - (h) Providing information contained in the Register of Applications to the Media and Communication Unit for the EDA annual report for the preceding year.

## EUROPEAN DEFENCE AGENCY

### DECISION N° 19/09

2. The “*relevant Directorate*” is the one dealing with the subject-matter of the Application for access to documents and is responsible for its follow-up. The Director of the relevant Directorate is responsible for attribution within the Directorate. Where the Application relates to a cross-Directorate matter, the Directorate to which the Application is attributed shall consult other involved Directorates to ensure appropriate follow-up.

#### Article 4 – Exceptions

1. In accordance with Article 4(1) of Regulation 1049/2001, the Agency shall refuse access to a document where disclosure would undermine the protection of:

(a) the public interest as regards:

- public security,
- defence and military matters,
- internal relations,
- the financial, monetary or economic policy of the Union or a Member State;

(b) privacy and the integrity of the individual, in particular in accordance with EU legislation regarding the protection of personal data.

2. In accordance with Article 4(2) of Regulation 1049/2001, the Agency shall refuse access to a document where disclosure would undermine the protection of:

- commercial interests of a natural or legal person, including intellectual property,
- court proceedings and legal advice,
- the purpose of inspections, investigations and audits,

unless there is an overriding public interest in disclosure.

3. The exceptions under paragraph 1 above apply mandatorily without a need to examine whether there is an overriding public interest in disclosure of the requested document. The exceptions under paragraph 2 also apply mandatorily but only after a balancing of the risk in disclosing with the possible existence of an overriding public interest. This means that when arguing for exceptions under paragraph 2 above, the Agency should make this balancing of interest test and provide its assessment before refusing access.

4. Access to a document, drawn up by the Agency for internal use or received by the Agency, which relates to a matter where the decision has not been taken by the Agency, shall be refused if

## EUROPEAN DEFENCE AGENCY

### DECISION N° 19/09

disclosure of the document would seriously undermine the Agency's decision making process, unless there is an overriding public interest in disclosure.

5. Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the Agency concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the Agency's decision-making process, unless there is an overriding public interest in disclosure.
6. As regards third party documents, the Agency shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.
7. A Member State may request the Agency not to disclose a document originating from that Member State without its prior agreement.
8. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.
9. The exceptions as laid in paragraphs 1, 2, 4 and 5 shall only apply for 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 the case of documents covered by the exceptions relating to privacy or commercial interests and in the case of sensitive documents, the exceptions may, if necessary, continue to apply after this period.

#### Article 5 – Deadlines

1. The Agency shall answer initial Applications and Confirmatory Applications made following a total or partial refusal of access, within 15 working days from the date of registration of the Application.
2. If an Application is not sufficiently precise, the Agency shall invite the Applicant to provide additional information to make it possible to identify the documents requested; the deadline for a reply shall run only from the time when the Agency has this information.
3. In exceptional cases, set out in Article 7(3) or 8(2) of Regulation 1049/2001, the deadlines may be extended by 15 working days, in particular:
  - (a) In the case of complex or bulky Applications; or
  - (b) If consultation of a third party is required and cannot be achieved within the deadline.
4. The Applicant must be informed of any such extension and of the reasons for it.

#### Article 6 – Processing of initial Applications

## EUROPEAN DEFENCE AGENCY

### DECISION N° 19/09

1. Applications shall be made in writing and sent to the Agency by email to [accesstodocuments@eda.europa.eu](mailto:accesstodocuments@eda.europa.eu). The use of alternative means (e.g. by post) does not mean the Application is inadmissible.
2. As soon as the Application is registered, an AoR shall be sent by the Legal Office to the Applicant pending a response, unless a document requested can be easily provided by return of email.
3. Where the document requested is directly accessible as defined in Article 12 of Regulation 1049/2001 and Article 10 of this Decision, the Applicant shall be notified of such, together with details of how to retrieve the document in question.
4. If the response to an Application is even partly negative, it shall state the reasons for the refusal based on one of the exceptions set out in Article 4 above, and inform the Applicant of his right, within 15 working days of receiving the Agency's reply, to submit a Confirmatory Application (in the case of an answer to an initial Application) or other remedies available to him (in the case of an answer to a Confirmatory Application).
5. Failure by the Agency to reply within the time limit prescribed above shall entitle the Applicant to make a Confirmatory Application.

#### Article 7 – Processing of Confirmatory Application

1. In accordance with Article 7(2) Regulation 1049/2001, an Applicant may, in case of total or partial refusal of access, make a Confirmatory Application within 15 working days of receiving the Agency's reply.
2. Decisions on Confirmatory Applications are made by the Chief Executive upon advice of the relevant Directorate and the Legal Office, as necessary.
3. The Decision shall be notified to the Applicant in writing, where possible by electronic means, and shall inform him or her of their right to bring an action before the Court of Justice of the European Union and/or to lodge a complaint with the European Ombudsman, in accordance with Article 8(3) of Regulation 1049/2001.

#### Article 8 – Applications for access to third party documents

##### *I. No consultation of third party author*

1. Where the Agency receives an Application for access to a document in its possession but which originates from a third party, the Agency shall check whether one of the exceptions provided under Article 4 applies and, if so, shall refuse access without consulting the third party author.
2. The Agency shall grant access without consulting the third party author where:

## EUROPEAN DEFENCE AGENCY

### DECISION N° 19/09

- (a) the document requested has already been disclosed either by its author or under Regulation 1049/2001 or similar provisions;
- (b) it is clear that the disclosure, or partial disclosure, of its contents would not affect one of the interests referred to in Article 4. This assessment shall be made and justified by the relevant Directorate.

#### *II. Consultation of third party author*

- 3. In all other cases not covered under paragraphs 1 and 2 above, the third party author shall be consulted and given a deadline to reply which shall allow the Agency to respect its own deadline to reply to the Applicant.
- 4. In the absence of an answer within the prescribed deadline, 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, taking into account the legitimate interests of the third party on the basis of the information at its disposal.
- 5. If the third party author objects to the full or partial disclosure of the document(s), a justification based on one of the exceptions under Article 4 of Regulation 1049/2001 must be provided by the third party. The fact that a third party objects is not in itself an exception that can be invoked.
- 6. In cases of justified objection to disclosure, the Agency will confirm the refusal and not overrule the third party. Where appropriate, the overruling of the third party author's explicit objections to disclosure should be done at the confirmatory level, by the Chief Executive in line with Article 7(2).

#### *III. Member State documents*

- 7. If an Application for access concerns a document originating from a Member State, the Agency shall consult the originating Member State authority and shall not disclose the document without its prior agreement, in line with Article 4(5) of Regulation 1049/2001. In case of disclosure, the Agency shall request the Member State authority to provide it with a justification for such refusal.

#### Article 9 – Exercise of the right of access

- 1. Where possible, documents shall be sent by email.
- 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).

## EUROPEAN DEFENCE AGENCY

### DECISION N° 19/09

3. If the volume of the copies of documents requested exceeds twenty pages, the Applicant may be charged a fee to cover the cost of producing and sending copies. This fee shall be set by the Chief Executive and shall not exceed the real cost of producing and sending the copies.
4. The right of access to Agency documents, subject to the exceptions under Article 4 of Regulation 1049/2001, does not confer on the Applicant a right to reproduce, exploit or publish these documents. Depending on the nature of the document requested, the Agency may inform the Applicant that the documents should not be reproduced or disseminated further, in line with Article 16 of Regulation 1049/2001.

#### Article 10 – Documents directly accessible to the public

1. As far as possible, and subject to access exceptions, the following documents shall be made directly accessible to the public by electronic means:
  - (a) Documents made available under the EDA website at <http://www.eda.europa.eu/>
  - (b) Documents originating from third parties which have already been disclosed by their author or with his/he consent;
2. The Chief Executive may add to the list of documents in paragraph 1 as appropriate.

#### Article 11 – Reporting

Pursuant to Article 17(1) of Regulation 1049/2001 and based on the Register of Applications for access to documents, the Agency shall report on a yearly basis the number of cases in which the Agency refused to grant access to documents and the reasons for such refusals which will be published in the EDA annual report, as referred under Article 3.1 (h) of this Decision

#### Article 12 – Data Protection

The processing of personal data in application of this Decision is subject to Article 31 of the Council Decision and shall be carried out in accordance with the Regulation (EU) 2018/1725<sup>3</sup>.

<sup>3</sup> 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. 39–98).

**EUROPEAN DEFENCE AGENCY**

**DECISION N° 19/09**

Article 13 – Repeal and entry into force

The present Decision repeals Decision No 17/15 of 9 November 2017 and shall enter into force on the date of its adoption.

Done at Brussels, on

7<sup>th</sup> June 2019



**Jorge Domecq**  
Chief Executive