

**DECISION No MB/2019/17
OF THE MANAGEMENT BOARD OF
THE EUROPEAN UNION AGENCY FOR CYBERSECURITY**

ON PUBLIC ACCESS TO ENISA DOCUMENTS

The MANAGEMENT BOARD,

Having regard to Regulation (EU, Euratom) 2019/8811 of the European Parliament and of the Council of 17 April 2019 on ENISA (the European Union Agency for Cybersecurity and repealing Regulation (EU) No 526/2013 (hereinafter referred to as the Agency) and in particular Article 28(2) thereof;

Whereas:

(1) The Treaty on the Functioning of the European Union enshrines the principle of transparency in the third paragraph of Article 15 states that any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph;

(2) In the Joint Declaration² relating 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 documents³, the European Parliament, the Council and the Commission call on the other institutions and bodies of the Union to adopt internal rules on public access to documents which take account of the principles and limits set out in the Regulation. The regime on public access to ENISA documents as laid down in Decision MB/2013/14 of 17 October 2013 regarding public access to documents should be revisited.

(3) The transparency is a guarantee of greater legitimacy, efficiency and responsibility of the administration with respect to its citizens in a democratic system and whereas transparency contributes towards reinforcement of the principles of democracy and respect for fundamental rights as defined in Article 6 of the Treaty on European Union and in the Charter of Fundamental Rights of the European Union;

(3) It is therefore necessary to establish rules for implementing 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 for all documents which are not covered by the above-mentioned provisions;

(4) In order to bring about greater openness, ENISA should grant access not only to documents drawn up by it, but also to documents received by it while at the same time preserving the right for the third parties concerned to express their positions with regard to access to documents originating from those parties.

(5) Clear rules assist smooth administration by helping those responsible to deal accurately and rapidly with applications made by the public;

HAS DECIDED TO ADOPT THE FOLLOWING DECISION:

¹ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2019.151.01.0015.01.ENG&toc=OJ.L:2019:151:TOC

² OJ L 173, 27.6.2001, p. 5.

³ <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001R1049>

Article 1

Beneficiaries

1. Citizens of the Union and natural or legal persons residing or having their registered office in a Member State shall exercise their right of access to documents of the European Union Agency for Cybersecurity - ENISA (hereinafter 'the Agency') pursuant to Article 2(1) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents (hereinafter 'Regulation' (EC) No 1049/2001) in accordance with these detailed rules.
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 Agency in one of the Member States shall enjoy the right of access to Agency documents on the same terms as the beneficiaries referred to in Article 2(1) of Regulation (EC) No 1049/2001.

Article 2

Applications for access

1. All applications for access to a document shall be sent to the Agency; by electronic mail (access-documents@enisa.europa.eu), or by post to European Union Agency for Cybersecurity – ENISA Head of Resources - Access to Document Request (Vasilissis Sofias Street 1- Maroussi – 15124 – Attiki - Greece). The Agency shall answer initial and confirmatory access applications within fifteen working days from the date of registration of the application. In the case of complex application or an application relating 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.
2. 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 a reply shall run only from the time when the Agency has this information.
3. Any decision which is even partly negative shall state the reason for the refusal based on one of the exceptions listed in Article 4 of Regulation (EC) No 1049/2001 and shall inform the applicant of the remedies available to him.

Article 3

Processing of initial applications

1. Without prejudice to Article 8 of this Decision, as soon as the application is registered, an acknowledgement of receipt shall be sent to the applicant,. The acknowledgement of receipt and the answer shall be sent in writing, where appropriate, by electronic means. The applicant shall be informed of the response to his application. Any reply which is even partly negative shall inform the applicant of his right to submit, within fifteen working days from receipt of the answer, a confirmatory application to the Agency.
2. 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.
3. Failure by the Agency to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.
4. 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, or if the consultation of a third party is required, ENISA may extend the time limit provided for in paragraph 1 by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

Article 4

Procession of confirmatory applications

1. The Executive Director of the Agency shall take the decisions refusing access relating to confirmatory applications. He shall inform the Management Board of the Agency of such actions.
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 General Court or to lodge 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, or if the consultation of a third party is required, ENISA may extend the time limit provided for in paragraph 1 by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

Article 5

Consultation

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 under one of the exceptions provided for by Article 4 of Regulation (EC) No 1049/2001, the negative answer shall be sent to the applicant without consultation of the third-party author.
3. The Agency shall grant the application 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 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) No 1049/2001.
4. 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 where:
 - a. the document was forwarded to the Agency before the date from which Regulation (EC) No 1049/2001 applies;
 - b. 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.
5. The third party consulted shall have a deadline for reply which shall not be shorter than five working days but shall 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 originating authority or author, it shall inform the originating authority or author of its intention to disclose the document after a ten-working days period and shall draw his attention to the remedies available to him to oppose disclosure.

Article 6

Exercise of the right of access

1. Copies of documents shall be sent by mail or if possible, by e-mail. If documents are voluminous or difficult to handle, the applicant may be invited to consult the documents at the ENISA premises. Consultation at the ENISA premises, copies of less than 20 A4 pages and direct access in electronic form 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 where appropriate of its web address on the Agency's website www.enisa.europa.eu.
3. The costs of producing and sending copies may be charged to the applicant. If the volume of the documents requested exceeds twenty pages, the applicant may be charged a fee of EUR 0.10 per page plus carriage

costs. The charges for other media shall be decided on a case by case basis but shall not exceed a reasonable amount.

4. Documents released in accordance with this Decision shall not be reproduced or exploited for commercial purposes without ENISA's prior specific authorisation. ENISA may withhold such authorisation without stating reasons.
5. This Decision shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.

Article 7

Measures facilitating access to the documents

1. In order to make citizens' rights deriving from Regulation (EC) No 1049/2001 effective, the Agency shall provide access to a register of documents. The register shall be accessible in electronic form.
2. The register shall contain the title of the document (in the languages in which it is available), its serial 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, there shall be 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. The following documents shall be automatically provided on request and, as far as possible, made directly accessible by electronic means:
 - a. documents adopted by the Executive Director of the Agency for publication in the Official Journal of the European Union;
 - 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

1. This Decision shall enter into force on the date of its adoption.
2. The entry into force of this Decision repeals Decision No MB/2013/14 of 17 October 2013 regarding public access to documents.

Done via written procedure on 27.12.2019.

On behalf of the Management Board,

[signed]

Mr. Jean-Baptiste Demaison

Chair of the Management Board of ENISA