II

(Acts whose publication is not obligatory)

EUROPEAN AGENCY FOR SAFETY AND HEALTH AT WORK

DECISION OF THE ADMINISTRATIVE BOARD OF THE EUROPEAN AGENCY FOR SAFETY AND HEALTH AT WORK

of 4 March 2004

on the implementation of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to documents of the European Parliament, of the Council and of the Commission

(2004/508/EC)

THE ADMINISTRATIVE BOARD,

Having regard to Council Regulation (EC) No 1654/2003 amending Regulation (EC) No 2062/94 on the creation of a European Agency for Safety and Health at Work [1],

Whereas the Treaty on European Union enshrines the principle of transparency in the second paragraph of Article 1, according to which the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen;

Whereas 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;

Whereas Council Regulation (EC) No 1654/2003 of 18 June 2003 contains provisions which guarantee public access to Agency's files by opening them to public inspection and allowing access to the Register;

Whereas it is therefore necessary to establish rules for implementing Regulation (EC) No 1049/2001 [2] 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 abovementioned provisions;

Whereas decisions concerning action to be taken on initial applications are taken by members of staff of the Agency responsible for examining access applications and whereas decisions refusing access resulting from confirmatory applications are taken by the Director of the Agency;

Whereas Regulation (EC) No 1654/2003 states also that the Administrative Board shall adopt practical arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of Council Regulation (EC) No 1654/2003;

Whereas clear rules assist smooth administration by helping those responsible to deal accurately and rapidly with applications made by the public,

HAS ADOPTED THIS DECISION:

Article 1

Beneficiaries

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

2. Citizens of the Union and natural or legal persons residing or having their registered agency in a Member State shall exercise their right of access to documents of the European Agency for Safety and Health at Work (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.

3. 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.

[1] OJ L 245, 29.9.2003, p. 38.
[2] OJ L 145, 31.5.2001, p. 43.

Article 2

Applications for access

1. Applications for access to Agency documents which are not publicly available shall be made in written form, and shall be sent to the Agency by electronic mail (docrequest@osha.eu.int), by post (European Agency for Safety and Health at Work, Documentation, Gran Via, 33, E-48009 Bilbao) or by fax ((34) 944 79 43 83). The Agency shall answer initial and confirmatory access applications within 15 working days from the date of registration of the application. In the case of complex or bulky applications, the deadline may be extended by 15 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 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/her.

Article 3

Treatment 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, unless the answer can be sent by return post.

The acknowledgement of receipt and the answer shall be sent in writing, where appropriate, by electronic means.

2. The applicant shall be informed of the response to his/her application by the Head of Unit concerned.

3. Any answer which is even partly negative shall inform the applicant of his/her right to submit, within 15 working days from receipt of the answer, a confirmatory application to the Agency to reconsider its position.

4. 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 Director of the Agency shall take the decisions refusing access relating to confirmatory applications. He/she shall inform the Administrative 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/her of his/her right to bring an action before the Court of First Instance or 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 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 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/her attention to the remedies available to him/her to oppose 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 on the spot. This consultation shall be free.

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.agency.osha.eu.int.

3. 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.

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) and other useful references to identify the document.

3. A help page (in all official languages) 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 originating from third parties which have already been disclosed by their author or with his/her consent;

(b) documents already disclosed following a previous application.

Article 9

Reports

The Agency shall publish annually as part of the annual report, information concerning the implementation of this decision, in particular statistics on the number of requests for access to documents of the Agency, the number of refusals and the reasons for such refusals in accordance with Article 17(1) of Regulation (EC) No 1049/2001.

Article 10

Entry into force

This decision shall enter into force on the day of its adoption and shall be published in the *Official Journal of the European Union*.

Done at Bilbao, 4 March 2004.

For the Administrative Board

Chairperson

Christa SCHWENG