

DECISION
ADB(D)-03-2010

**Concerning the transparency and public access to the documents of the
Joint Undertaking**

The Administrative Board of the SESAR Joint Undertaking,

Having regard to the Treaty of the Functioning of the European Union,

Having regard to Council Regulation No 219/2007 establishing a Joint Undertaking to develop the new generation European air traffic management system (“SESAR Joint Undertaking” hereinafter “SJU”) of 27 February 2007¹ and in particular article 19 thereof;

Whereas in order to ensure that the SESAR Joint Undertaking operates in accordance with the principles of transparency, accountability and openness, 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 (hereinafter referred to as “Regulation 1049/2001”) should apply to the SJU under the arrangements to be set by the Administrative Board;

Through written procedure, has adopted the following decision:

Article 1
Beneficiaries

Citizens of the European Union and natural or legal persons residing or having their registered office in a Member State of the European Union shall have the right of access to documents of the SJU pursuant to Article 2(1) of Regulation 1049/2001 in accordance with the present detailed rules.

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

Article 2
Definitions

1. “Documents” shall mean 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 SJU’s sphere of responsibility.

¹ Council Regulation (EC) N° 219/2007 of 27 February 2007, OJ L 64, 02/03/2007, p1 – 11.

2. “Third party” shall mean any natural or legal person, or any entity outside the SJU, including the Members, European Union or non-European Union institutions and bodies and third countries.

Article 3 Access applications

1. Applications for access to the SJU’s documents, which are not publicly available, shall be made in writing including electronic form and in a sufficiently precise manner to enable the Joint Undertaking to identify the document(s). The relevant contact details to which the application shall be sent are annexed to this Decision and shall be regularly updated by the Executive Director.
2. The SJU shall answer initial and confirmatory access applications within fifteen days from the date of registration of the application. In case of complex or bulky applications, the deadline may be extended by fifteen 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) N° 1049/2001, the SJU shall invite the applicant to provide additional information making it possible to identify the document(s) requested. In this case the deadline for reply shall run only from the time when the Agency has this information.
4. 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 the Regulation (EC) N° 1049/2001 and shall inform the applicant of the remedies available to him/her.

Article 4 Processing of initial applications

1. Without prejudice to Article 8 of these Rules, as soon as the application is registered, an acknowledgement of receipt shall be sent to the applicant, unless the documentation can be sent by return.
2. The acknowledgement of receipt and the reply shall be sent in writing, where appropriate, by electronic means.
3. The SJU shall inform the applicant of its decision with the respect to the initial application.
4. Any answer which is even partly negative shall inform the applicant of his right to submit, within fifteen days from receipt of the answer, a confirmatory application to the Executive Director of the SJU.
5. Failure by the SJU to reply within the prescribed time limit shall entitle the applicant to make a confirmatory application.

Article 5 Processing of confirmatory applications

1. A confirmatory application shall be handled within fifteen days from its registration.

2. The applicant shall be informed in a written reply, where appropriate by electronic means, of the results given to his/her confirmatory application by the Executive Director of the SJU. Within the time-limit referred to in paragraph 1, the SJU shall either grant access to the document(s) requested or state the reasons for the total or partial refusal. In the event of a total or partial refusal, the Executive Director shall inform the applicant of the remedies open to him/her, namely instating court proceedings against the SJU and/or making a complaint to the Ombudsman, under the conditions laid down in Article 263 and 228 of the Treaty of the Functioning of the European Union, respectively.
3. In the event of a complex application or an application relating to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 15 days, provided that the applicant is notified in advance and that the detailed reasons are given.
4. Failure by the SJU to reply within the prescribed time-limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the SJU and/or make a complaint to the Ombudsman, under the relevant provision of the Treaty of the Functioning of the European Union.

Article 6

Access to third-party documents

1. Where the SJU receives an application for access to a document, which it holds but which originates from a third party, the SJU shall consult the third party with a view to assessing whether an exception referred to in Article 3.4 is applicable unless it is clear that the document shall, or shall not, be disclosed.
2. The third-party consulted shall have a time-limit to comment on the application for access to the document(s) of which he/she is the author of a minimum of five days, but must enable the SJU to abide by its own time-limit for reply. The absence of a reply within the prescribed time-limit shall be considered as a positive reply and the SJU may grant access to the requested document(s), subject to the exception defined under Article 4 of Regulation (EC) 1049/2001.
3. Where release of document(s) requested is prevented by one of the exceptions referred to in Article 4 of Regulation (EC) 1049/2001, the SJU shall notify the applicant of the refusal in a written reply, where appropriate by electronic means, without consulting the third-party author of the document(s). If only parts of the requested document(s) are covered by any of the exceptions referred to in Article 4 of Regulation (EC) 1049/2001, the SJU shall grant access to the remaining parts of the document(s).
4. With the exception of document(s) originated from a Member State, the SJU shall grant access to the document(s) without prior consultation of its author or when it is clear that the disclosure of the contents of the document(s), in whole or part, will not undermine the protection of the interest referred to in article 4 of Regulation (EC) N) 1049/2001.

Article 7

Access following an application

1. The applicant shall have access to the document(s) either by receiving a copy, in paper or electronic format, or by consulting specific documents at the SJU's premises. Copies of less than 20 pages or direct access in electronic form or through the register shall be free of charge. As regards copies of more than 20 pages, the charge shall not exceed the real cost of producing and sending copies.
2. If a document has already been released by the SJU and is easily accessible to the applicant, the SJU fulfils its obligation of granting access to documents by informing the applicant how to obtain the requested document on the basis of its publication references, its location and, where available, its web address.

Article 8

Measures facilitating access to the documents

1. To make citizen's rights under this Decision effective, the SJU shall provide public access to an electronic register of documents of the SJU through its website.
2. The register shall contain the title of the document, an identifier, the subject matter and/or a short description of the document and the date on which it was received or drawn up and recorded in the register.

Article 9

Documents directly accessible to the public

1. The following documents shall be automatically provided on request and, as far as possible, make directly accessible by electronic means:
 - Minutes and decisions of the Administrative Board;
 - SJU adopted work programme;
 - Recruitment and vacancies
 - Organisational chart;
 - Budgetary and financial documents;
 - Annual report;
 - Any document published in the Official Journal;
2. The Executive Director may add, when necessary after consultation of the Chairman of the Administrative Board, other documents to the list set out in paragraph 1.

Article 10

Internal organisation and report

1. The Executive Director of the SJU shall ensure coordination and uniform implementation of these rules by the SJU staff. To this end, he/she shall provide all the necessary advice and guidelines
2. The SJU shall publish annually, as part of the annual report, information concerning the implementation of these rules, in particular statistics on the number of requests for access to SJU documents, the number of cases in which the SJU refused to grant access to documents, and the reasons for such refusals.
3. The SJU Administrative Board may review these implementing rules whenever deemed necessary and adopt any modifications needed.

Article 11
Reproduction of Documents

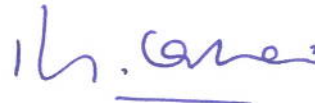
These rules shall be without prejudice to any existing rules on copyright which may limit a third-party's right to reproduce or exploit released documents

Article 12
Entry into force

This Decision shall enter into force on the date of its adoption by the SJU Administrative Board. It shall be made available on the SJU website.

Done in Brussels, 18 January 2010

For the Administrative Board



Daniel Calleja Crespo
The Chairperson

ANNEX

Addresses for submission of applications for access to documents held by eh
SESAR Joint Undertaking.

1 By post:

SESAR Joint Undertaking
Access to Documents
100 Avenue de Cortenbergh
1000 Bruxelles
Belgium

2. By electronic mail

info@sesarju.eu

3. Via the SESAR Joint Undertaking's website

<http://www.sesarju.eu/>

3.By fax:

+32 (0)2 507 80 01