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**DECISION No 6
OF THE MANAGEMENT BOARD OF THE EUROPEAN ASYLUM SUPPORT OFFICE**

of 20 September 2011

**Laying down practical arrangements regarding public access to the documents
of the European Asylum Support Office (EASO)**

THE MANAGEMENT BOARD,

HAVING REGARD to the Treaty on the functioning of the European Union as amended by the Treaty of Lisbon and in particular Article 15(3) thereof,

HAVING REGARD to Regulation (EU) No 439/2010 of 29 May 2010 of the European Parliament and of the Council, establishing a European Asylum Support Office ⁽¹⁾ (hereinafter referred to as "the EASO Regulation"),

WHEREAS:

(1) Article 42 of Regulation (EU) No 439/2010 foresees that 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 ⁽²⁾ will apply to the EASO,

(2) It is necessary to establish rules implementing Regulation (EC) No 1049/2001,

(3) In principle, all documents of the EASO should be accessible to the public. However, certain public and private interests should be protected by way of exceptions. The EASO should be entitled to protect its internal consultations and deliberations where necessary to safeguard its ability to carry out its tasks. In assessing the exceptions, the EASO should take account of the principles in the EU legislation concerning the protection of personal data, in all areas of Union activities,

(4) On account of their sensitive content, certain documents should be given special treatment,

(5) In order to safeguard the EASO's ability to carry out its tasks, special attention should be paid to the specific requirements of the EASO as a specialised body tasked with improving the implementation of the Common European Asylum System, strengthening practical cooperation among Member States on asylum, and to providing and/or coordinating the provision of operational support to Member States subject to particular pressure on their asylum and reception systems. In

¹ OJ L 132, 25.5.2010, p.11.

² OJ L 145, 31.5.2001, p 43.

any case, the fulfilment of the EASO's objectives as laid out in its founding Regulation should not be jeopardised,

HAS ADOPTED THIS DECISION:

Article 1 Purpose

1. This Decision prescribes the arrangements under which the public, within the meaning of Article 2(1) and 2(2) of Regulation (EC) No 1049/2001, shall be granted access to documents held by the European Asylum Support Office in implementing Regulation (EC) No 1049/2001.
2. Any natural or legal person has a right of access to EASO documents subject to the principles, conditions and limits laid down in Regulation (EC) No 1049/2001 and the specific provisions laid down in this Decision. Access to certain documents shall be refused by virtue of application of one or more of the exceptions mentioned in Article 3.
3. In addition, the EASO documents can be subject to classification, which restricts or prevents access to them. Rules for the classification of the EASO documents are set out in Annex 1 to this Decision.

Article 2 Definitions

For the purposes of this Decision:

- (a) "EASO document" or "document" 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 sphere of responsibility of the EASO;
- (b) "third party" shall mean any natural or legal person, or any entity other than the EASO, including the EU Member States, other EU or non-EU institutions, bodies and agencies, international organisations and third countries.

Article 3 Exceptions

1. The EASO 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, international relations, the financial, monetary or economic policy of the EU or a Member State;
 - (b) privacy and the integrity of the individual, in particular in accordance with the EU legislation regarding the protection of personal data;
 - (c) commercial interests of a natural or legal person, including intellectual property;
 - (d) court proceedings and legal advice;
 - (e) the purpose of inspections, investigations and audits;

unless there is an overriding public interest in disclosure.

2. Access to a document drawn up or co-authored by the EASO for internal use or received by the EASO, which relates to a matter where the decision has not been taken by the EASO, shall be refused if disclosure of the document would seriously undermine the EASO's decision-making process, unless there is an overriding public interest in disclosure.
3. Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the EASO shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the EASO's decision-making process, unless there is an overriding public interest in disclosure.
4. As regards third-party documents, the EASO shall consult the third party in accordance with Article 7 unless it is clear that the document shall or shall not be disclosed.
5. A Member State may request the EASO not to disclose a document originating from that Member State without its prior agreement.
6. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.
7. The exceptions as laid down in paragraphs 1 to 4 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 4 Applications

1. Applications for access to a document shall be made in writing, preferably in electronic form, in one of the languages referred to in Article 55 of the EU Treaty and in a sufficiently precise manner to enable the EASO to identify the document. The applicant is not obliged to state reasons for the application. The relevant contact details to address the applications are listed in Annex 2 to this Decision and may be updated periodically.
2. If an application is imprecise, as defined in Article 6(2) of the Regulation (EC) No 1049/2001, the EASO shall invite the applicant to provide additional information to clarify the application. The deadline for the EASO to respond to the application shall be fifteen (15) working days from receipt of the information necessary to identify the document in question.
3. In the event of an application relating to a very long document or to a very large number of documents, the EASO may confer with the applicant informally, with a view to finding a fair solution.
4. The EASO shall provide information and assistance to citizens on how and where applications for access to documents can be made.

Article 5 Processing of initial applications

1. The EASO shall respond to initial applications within fifteen (15) working days from the date of registration of the application.
2. 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, the time-limit provided for in paragraph 1 of the present article may be extended by an additional fifteen (15) working days, provided that the applicant receives reasoned notice in advance.
3. An acknowledgement of receipt shall be sent to the applicant in writing or by electronic means.
4. Where the document requested is directly accessible as defined in Article 12 of Regulation (EC) No 1049/2001, the applicant shall be notified as such together with details of how to retrieve the document in question.
5. Any written decision to deny access to a document or part of a document shall state the reasons for the total or partial refusal and inform the applicant that he/she may, within fifteen (15) working days of receiving the EASO's reply, make a confirmatory application asking it to reconsider its position.
6. Failure by the EASO to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

Article 6 **Processing of confirmatory applications**

1. The Executive Director of the EASO shall take decisions regarding confirmatory applications. Such requests shall be handled promptly. Within fifteen (15) working days from the date of registration of the confirmatory application, the EASO shall either grant access to the document requested in accordance with Article 10 or, in a written reply, state the reasons for the total or partial refusal.
2. In the event of a total or partial refusal, the EASO shall inform the applicant of the remedies open to him or her, namely to lodge a complaint to the European Ombudsman or institute Court proceeding against the EASO, under Article 228 or 263 of the Treaty on the Functioning of the European Union, respectively.
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, the time-limit provided for in paragraph 1 of the present article may be extended by fifteen (15) working days, provided that the applicant receives reasoned notice in advance.
4. Failure by the EASO to reply within the prescribed time-limit shall be considered as a negative reply.

Article 7 **Third Party consultations**

1. Where the EASO receives an application for access to a document that it holds but that originates from a third party or that it has co-authored with a third party, the EASO shall check whether one of the exceptions provided for under Article 3 applies.

2. If, after the examination, the EASO considers that access to it must be refused under one or more of these exceptions, the negative answer shall be sent to the applicant without consultation of the third party.
3. The EASO shall grant access without consulting the third party where the document requested has already been disclosed either by its author or under Regulation (EC) No 1049/2001 or similar provisions.
4. In all other cases, the third party shall be consulted in writing (including by e-mail). In particular, if an application for access concerns a document originating from an EU institution or a Member State, the EASO shall consult the originating or co-authoring third party.
5. The third party consulted shall be given five (5) working days to reply, allowing the EASO to respect its own deadline to reply to the applicant. In the absence of a reply within the prescribed period, or in those cases where the third party is untraceable or unidentifiable, the EASO shall reach a decision in accordance with the criteria set out in Article 3, taking into account the legitimate interests of the third party on the basis of the information at its disposal.
6. Where the EASO, in accordance with Regulation (EC) No 1049/2001, intends to give access to a document originating from a third party or co-authored with a third party against the explicit opinion of the third party concerned, it shall inform the third party accordingly ten (10) working days before granting access and shall draw its, his or her attention to the remedies available to oppose disclosure.

Article 8

EASO documents or joint documents in the EU Member States

Where an EU Member State receives a request for a document in its possession, originating from the EASO or co-authored by the EASO, unless it is clear that the document shall or shall not be disclosed, the EU Member State shall consult with the EASO in order to take a decision that does not jeopardise the attainment of objectives and tasks of the EASO. The EASO shall reply without undue delay.

The EU Member State may instead refer the request to the EASO.

Article 9

Treatment of sensitive documents

1. Sensitive documents are documents originating from the EASO or third parties or co-authored by the EASO, classified as "TOP SECRET", "SECRET", "CONFIDENTIAL" or "RESTRICTED" in accordance with the rules of the party concerned, which protect essential interests of the European Union or of one or more of its Member States in the areas covered by Article 3(1)(a), notably public security, defence and military matters.
2. Where an application for access concerns a sensitive document, it shall be handled only by those persons who have a right to acquaint themselves with the document.
3. Sensitive documents shall be recorded in the register or released only with the consent of the originator.

4. If the EASO decides to refuse access to a sensitive document, it shall give the reasons for its decision in a manner that does not harm the interests protected in Article 3.
5. If it proves that access to the requested document cannot be refused on the basis of the exceptions listed in Article 3, the person handling the application shall ensure that the document is declassified before sending it to the applicant.

Article 10 **Access following an application**

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, where available in electronic form, according to the applicant's preference. The cost of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies. Consultation on the spot, copies of less than twenty (20) A4 pages and direct access in electronic form shall be free of charge.
2. If a document has already been released by the EASO or the third party concerned and is easily accessible to the applicant, the EASO may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.
3. Documents shall be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) in accordance with the applicant's preference.

Article 11 **Registers**

1. In order to make the right of access effective, the EASO shall provide access to an electronic register of documents available, in particular through its website. References to documents shall be recorded in the register without delay.
2. The register of documents shall cover the categories issued by the Executive Director and may be updated periodically by a Decision of the Executive Director.
3. A help page shall be provided to assist the public in finding specific information.
4. The register shall contain the title of the document, its reference number, a brief description of the contents, an indication of the author and the date on which it was received or drawn up and recorded in the register.
5. The register shall include a hyperlink to documents that are directly accessible.
6. For documents that are not directly accessible, the register will provide details of how to request access.

Article 12 **Documents directly accessible to the public**

1. The following documents should be made directly accessible by electronic means:
 - (a) All adopted EU legislation related to the EASO's mandate;

- (b) The annual budget of the EASO;
 - (c) The work programme of the EASO;
 - (d) Agendas of the Management Board meetings and of other expert meetings of the EASO;
 - (e) Brochures and other documents meant for the general public issued or co-authored by the EASO and any document adopted by the Management Board for publication as foreseen by the annual work programme of the EASO;
 - (f) All press releases issued by the EASO.
2. As far as possible the following documents shall be made directly accessible by electronic means:
- (a) Documents originating from third parties, which have already been disclosed by their author or with its, his or her consent;
 - (b) Documents already disclosed following a previous application (but not originating from third parties).
3. The Executive Director may add to the list of documents in paragraphs 1 and 2 of the present article as deemed appropriate.

Article 13 **Internal organisation**

1. The Executive Director shall ensure coordination and uniform implementation of these rules by EASO's staff. To this end, he or she shall provide all the necessary advice and guidelines.
2. The Executive Director shall designate a suitably-qualified person responsible for assessing initial and confirmatory applications for documents ("Document access coordinator").

Article 14 **Information**

The EASO shall take the requisite measures to inform the public of the rights they enjoy under Regulation (EC) No 1049/2001 and in accordance with this Decision.

Article 15 **Right of access to personal data**

This Decision shall be without prejudice to the right of individuals to have access to personal data concerning them, as stipulated in relevant EU legislation, such as the Regulation (EC) No 45/2001 of 18 December 2000 of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data by the Community Institutions and bodies and on the free movement of such data ⁽³⁾.

³ OJ L 8, 12.1.2001, p.1.

Article 16
Reproduction of documents

This Decision shall be without prejudice to any existing rules on copyright that may limit a third party's right to reproduce or exploit released documents.

Article 17
Report

Pursuant to Article 17 (1) of Regulation (EC) No 1049/2001, a report shall be annexed to the EASO's annual report, which shall include the number of cases in which the institution refused to grant access to documents and the reasons for such refusals.

Article 18
Entry into force

This Decision shall enter into force on the date of its adoption by the Management Board.

Done at Valletta,
For the Management Board

Signed on 20-09-2011

Stéphane Fratacci
Chair

ANNEX 1

CLASSIFICATION OF DOCUMENTS

This Annex sets out the EASO's rules on classification of documents and provides indications on the types of documents covered by the different levels of classification (refer to Articles 1 & 3).

Restricted

This classification shall be applied to information and material the unauthorised disclosure of which could be disadvantageous to the interests of the European Union Institutions, the Member States and the EASO. These are typically characterised by the fact that they may at some stage be made available to the public, but that their premature disclosure might be prejudicial to the interests of the EASO, including relations with Member States, EU institutions and bodies and international organisations.

Confidential

This classification shall be applied to information and material the unauthorised disclosure of which could harm the essential interests of the European Union Institutions, the Member States and the EASO.

Secret

This classification shall be applied to information and material the unauthorised disclosure of which could seriously harm the essential interests of the European Union Institutions, the Member States and the EASO.

Top Secret

This classification shall be applied to information and material the unauthorised disclosure of which could cause exceptionally grave prejudice to the essential interests of the European Union Institutions, the Member States and the EASO.

ANNEX 2

DETAILS FOR APPLICATIONS FOR ACCESS TO DOCUMENTS AND DETAILS OF CHARGES FOR THE PROCESSING AND DISPATCH OF ANY LARGE DOCUMENTS

This Annex provides address details for applications for access to documents together with details of charges for the processing and dispatch of any large documents. Given that these shall change from time to time and have not been finalised at this stage, it is proposed to keep this separate from the Decision itself so that it can be updated easily as required.

Addresses for submission of applications for access to documents held by the EASO

Applications shall be sent for the attention of the Document access coordinator by one of the methods below:

1. By post:

Document Access Coordinator
European Asylum Support Office
MTC Block A
Winemakers Wharf
Grand Harbour Valletta
MRS 1917
Malta

2. By electronic mail:

info@easo.europa.eu

3. By fax:

+356 xxxx xxxx

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

EUR 0.10 per page plus carriage costs