Decision of the High Representative of the Union for Foreign Affairs and Security Policy
of 19 July 2011
on the rules regarding access to documents
(2011/C 243/08)

THE HIGH REPRESENTATIVE,

Having regard to the Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service, in particular Article 11(1) thereof,

HAS ADOPTED THIS DECISION:

Article 1
Scope
1. Any citizen of the Union, or any natural or legal person residing or having its registered office in a Member State, shall have a right of access to EEAS documents according to the principles, conditions and limits laid down in Regulation (EC) No 1049/2001 of the European Parliament and of the Council (1) (the Regulation) and the specific provisions laid down in these rules. This right of access concerns documents held by the EEAS, namely, documents drawn up or received by it and in its possession.

2. Pursuant to Article 2(2) of the Regulation, any natural or legal person not residing, or not having their registered office, in one of the Member States shall, subject to the same principles, conditions and limits, enjoy the same right of access to EEAS documents on the same terms, with the exception of the right to make a complaint to the European Ombudsman.

Article 2
Making an application
1. An application for access to an EEAS document shall be sent by post to Access to Documents Coordinator, CHAR 15/11, European External Action Service, Rue de la Loi 170, 1046 Brussels, Belgium, by e-mail using the application form on the EEAS website, or by fax to +32 22979893.

2. As soon as the application is registered, an acknowledgement of receipt shall be sent to the applicant (unless the application can be answered in substance in the same time frame).

Article 3
Time limits
1. The EEAS shall answer initial and confirmatory applications within 15 working days of the date of registration of the application.

2. If an application is imprecise, as referred to in Article 6(2) of the Regulation, the EEAS shall invite the applicant to provide additional information to make it possible to identify the documents requested; the deadline for reply shall run only from the time when the EEAS has this information.

3. In exceptional cases, as set out in Articles 7(3) or 8(2) of the Regulation, the deadlines may be extended by 15 working days, in particular:

(a) in the case of complex or bulky applications;

(b) if a request requires consultation of a Union delegation; or

(c) if consultation of a third party is required.

The applicant must be informed of any such extension and of the reasons for it.

Article 4
Handling of replies
1. Answers to initial applications shall be handled by the Access to Documents Coordinator.

2. Answers to confirmatory applications shall be decided upon by the Chief Operating Officer, on the advice of the Access to Documents Coordinator.

Article 5

Negative response

If the answer to an application is even partly negative, it shall state the reasons for the refusal based on one of the exceptions set out in the Regulation, and inform the applicant of his right to submit a confirmatory application (in the case of an answer to an initial application) or the other remedies available to him (in the case of an answer to a confirmatory application).

Article 6

Third party documents held by the EEAS

1. Where the EEAS receives an application for a document which it holds, but which originates from a third party, the third party shall be consulted unless it is clear that the document shall or shall not be disclosed, in light of the exceptions set out in the Regulation.

2. The application shall be granted without consultation of the third party if the document has already been made public by its author, or under the Regulation or similar provisions.

3. In any case, the third party must be consulted if the document is covered by Article 9 of the Regulation, or if the document originates from a Member State and the Member State has requested the EEAS not to disclose the document without its prior agreement under Article 4(5) of the Regulation. Such a request by a Member State must be made in writing.

4. The third party shall be consulted in writing (including by e-mail) and be given a reasonable time limit for reply, taking into account the deadlines on the EEAS for its reply, as set out in Article 3 above. The third party shall give its opinion in writing (including by e-mail).

5. In the absence of a reply from the third party within the time limit, or if the third party is unidentifiable or untraceable, the EEAS shall decide on the application in light of the exceptions set out in the Regulation, taking into account the legitimate interests of the third party on the basis of the information at the disposal of the EEAS.

6. If the EEAS intends to give access to a document against the wishes of the third party, it shall inform the third party of its intention to disclose the document within the deadline applicable under the Regulation, and of the remedies available to the third party to oppose disclosure.

Article 7

Consultation of the EEAS

1. Requests for consultation of the EEAS by a Member State or another institution, body, office or agency of the Union which has received an application for a document within its possession but which originates from the EEAS, shall be sent by post to Access to Documents Coordinator, CHAR 15/11, European External Action Service, Rue de la Loi 170, Brussels 1046, Belgium, by e-mail to EEAS-ACCESS-TO-DOCUMENTS@eeas.europa.eu or by fax to +32 22979893.

2. The EEAS shall give its opinion promptly, taking into account any time limit applicable for answer, and at the latest within five working days.

Article 8

Classified documents

1. Where an application for access to a document concerns a document covered by Article 9 of the Regulation or another document classified under the EEAS security rules, it shall be handled by officials entitled to acquaint themselves with the document.

2. Reasons shall be given on the basis of the exceptions listed in Article 4 of the Regulation for any decision refusing access to all or part of a classified document. If the requested document cannot be refused on the basis of those exceptions, the official handling the application shall ensure that the document is declassified before it is sent to the applicant.

Article 9

Modalities of access

1. Documents to which access is to be granted shall be sent by mail, fax, or e-mail. If the documents requested are voluminous or difficult to handle, the applicant may be invited to consult them where they are held. Such consultation shall be free.

2. If the document has been published, an answer may consist of the publication references to it, including the web address where it may be found.

3. If the volume of the document exceeds 20 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 10

Register of documents

1. The EEAS shall maintain a register of documents, as provided for in Article 11 of the Regulation, accessible via the EEAS website.
2. In line with Article 9 of the Regulation, documents covered by that provision shall be recorded in the register only with the consent of the originator.

Article 11

Effect

This decision shall take effect on the day of its adoption.

Done at Brussels, 19 August 2011.

The High Representative

C. ASHTON