

## Processing of applications for access to documents

### 1. Purpose

This document describes the handling of initial and confirmatory applications for access to documents submitted to ECHA under Regulation (EC) No 1049/2001 on public access to documents ("ATD Regulation"). It applies to all staff members of ECHA dealing with applications for access to documents. ATD contact persons are designated in each Directorate and work in close collaboration with the ATD coordinators of LAU who are managing the process and provide legal advice.

### 2. Scope

This process starts with the receipt of an application for access to documents and generally ends with the sending of the final reply at initial stage. In case the Applicant decides to request the ED to review the initial decision (confirmatory application under Article 8 of the ATD Regulation), the process ends with the decision by the ED.

This process does not concern the handling of applications submitted in relation to procedural documents drawn up solely for a specific appeal procedure and which are in the sole possession of the Board of Appeal. These applications are processed by the Registry of the Board of Appeal. However, any procedural documents drawn up by the Agency for a specific appeal procedure are not deemed to be in the sole possession of the Board of Appeal and their possible disclosure is processed by LAU.

### 3. Description

#### 1. Filtering

1.1 Receipt of an application	<b>Responsibility/Role</b>
Forward the received application to ATD functional mailbox (access-to-documents@echa.europa.eu), if the request came in through other channels and in any case when there is doubt whether it is an access to document application.	ECHA staff member
1.2 Check if the documents are in the sole possession of the BoA	<b>Responsibility/Role</b>
Does the application concern documents, which are in the sole possession of the BoA? In order to define this, contact the Registry of BoA. If Yes, register the application in ATD SP and forward it to the Registry of BoA. Then go to 6.6.	ATD coordinator

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1.3 Identification of the application as an ATD application	Responsibility/Role
<p>Is the application an ATD application?</p> <p>If Yes, register the application in the ATD SP, send an acknowledgement of the receipt of application by email and go to 1.4.</p> <p>If No go to 2.1 for handling the access to information requests, or go to 2.2 for handling the access to own file.</p>	ATD coordinator
1.4 Check of the content of the application	Responsibility/Role
<p>Is the application sufficiently precise?</p> <p>Consult an ATD contact person from a competent Unit/Directorate.</p> <p>If No, go to 1.5.</p> <p>If Yes, go to 3.1.</p>	ATD coordinator
1.5 Clarification of the scope of the application	Responsibility/Role
<p>Ask the applicant by e-mail to clarify the application. Provide information and/or assist the applicant to help identifying the document requested. Inform the applicant that the deadline for replying shall start running only from the time that ECHA has received the clarification.</p> <p>In the same email acknowledge the receipt of application. In some cases combine with the fair solution (Point 4.2).</p>	ATD coordinator

## 2. Processing of other requests

2.1. Handling access to information requests	Responsibility/Role
<p>These requests shall be handled in accordance with the ECHA Code of good administrative behaviour.</p> <p>Is the reply to the request easily available?</p> <p>If Yes, reply directly to the requestor. If needed, consult with an ATD contact person from a competent Unit/Directorate.</p> <p>If No, channel the request (via the ECHA Information Desk) without delay to the competent service of ECHA.</p>	ATD coordinator

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2.2. Handling access to own file	Responsibility/Role
These requests are handled in line with ED decision ED/44/2015 on access to own file in ECHA.	ATD coordinator

### 3. Identification of documents

3.1 Identification whether ECHA holds documents	Responsibility/Role
Does ECHA hold (is an author or is in the possession of) the requested document? Consult an ATD contact person. If Yes, go to 4.1. If No, go to 3.2.	ATD coordinator
3.2 Draft of reply (no document exists)	Responsibility/Role
Assign the application to the competent Unit/Directorate (ATD Contact Person) together with a template for drafting the reply. Go to 6.3.	ATD coordinator

### 4. Processing of applications for ATD

4.1 Identification of the need to find a fair solution	Responsibility/Role
Is the application relating to a very long document/very large number of documents or is of a very complex nature? (E.g. the core task of the Agency is jeopardized). If Yes, go to 4.2. If No, go to 4.3.	ATD coordinator
4.2 Fair solution	Responsibility/Role
Contact the applicant with a view of finding a fair solution (e.g. agree on a different timeline or the limitation of the scope of application). Consult the ATD contact person of the competent Unit/Directorate. If a fair solution has been accepted, assign the application in line with 4.3. and go to 4.7. If the fair solution has not been accepted, go to 4.4. Upload ATD SP accordingly.	ATD coordinator

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4.3 Assignment of the handling of the application	<b>Responsibility/Role</b>
<p>Assign the application by email to the competent Unit/Directorate according to the rules below (copy in the competent HoU):</p> <ul style="list-style-type: none"> <li>- When a reply needs to be coordinated among several Directorates assign to the volunteering "lead" Directorate (Directorate which holds most of the documents in the scope);</li> <li>- In all other cases, assign the application to the ATD contact person(s) of the competent Unit/Directorate.</li> </ul> <p>If necessary, email to the ATD contact person(s) further considerations that might be taken into account for the handling of the application.</p> <p>The assignment shall indicate the legal deadline for replying to the application. The deadline starts running from the day of registration (or clarification under 1.5).</p> <p>If the applicant is a journalist, inform the Communications Unit by writing to ECHA Press Room (<a href="mailto:press@echa.europa.eu">press@echa.europa.eu</a>)</p>	<p>ATD coordinator</p>
4.4 Rejection on the basis of proportionality	<b>Responsibility/Role</b>
<p>If a fair solution is refused by an applicant, in exceptional cases it needs to be considered not to process an application for initial application on the ground that the workload relating to the disclosure would be disproportionate when compared with the objective of the principle of transparency.</p> <p>Seek legal advice of an ATD coordinator.</p> <p>If a decision not to process the application has been taken, go to 6.3.</p>	<p>ATD contact person(s)</p>
4.5 Assessment to extend the deadline	<b>Responsibility/Role</b>
<p>In some cases (e.g. application relating to a very large document or to a very large number of documents, and/or where suppression of confidential information is needed) it might be that an extension of the deadline is needed.</p> <p>The extension of deadline does not apply when the applicant accepted the fair solution with regard to longer deadline than 15+15 working days.</p> <p>Is an extension of the deadline needed?</p> <p>If Yes, go to 4.6.</p> <p>If No, go to 4.7.</p>	<p>ATD contact person(s)</p>
4.6 Extension of the deadline	<b>Responsibility/Role</b>
<p>A letter approved by the HoU or the Director must be sent to the applicant extending the time limit for the reply by another 15 working days (before the expiry of the initial deadline).</p> <p>The letter must state the reason(s) for an extension. Note that pursuant to Article 7(3) of the ATD Regulation this can only be done in exceptional</p>	<p>ATD contact person(s)</p>

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<p>cases, for example in the event of applications relating to a very long document or to a very large amount of documents.</p> <p>If needed, request the review of an ATD coordinator.</p> <p>Upload the letter to ATD SP accordingly.</p>	
<b>4.7 Determination of the author of the document</b>	<b>Responsibility/Role</b>
<p>Is the application relating to an ECHA document?</p> <p>If Yes, go to 6.</p> <p>Is the application relating to document(s) originating from a third party?</p> <p>If yes, go to 5.</p>	ATD contact person(s)

## 5. Third party consultation

<b>5.1 Assessment of the need for consultation</b>	<b>Responsibility/Role</b>
<p>Is the application relating to a document originating from a Member State?</p> <p>If Yes, go to 5.2.</p> <p>Is the application relating to a document originating from other third-parties?</p> <p>If Yes, go to 5.3.</p>	ATD contact person(s)
<b>5.2 Consultation with Member State</b>	<b>Responsibility/Role</b>
<p>Initiate the mandatory third-party consultation. Consult the ATD coordinator.</p> <p>The third-party author shall have a deadline for reply, which shall be no shorter than 5 working days but must enable the Agency to abide by its own deadlines for the reply.</p> <p>Send a letter to the author signed by the HoU or the Director.</p> <p>If the third-party agrees with disclosure, go to 6.3.</p> <p>In the absence of an answer within the prescribed period, call the Member State. In the continuous absence of a reply the Agency shall decide in accordance with the implementing rules, taking into account the legitimate interests of the third party on the basis of the information at its disposal (See article 5, ECHA/MB/12/2008).</p> <p>Following the receipt of the reply, assess whether access to the requested document can be granted in full or partially (i.e. parts of the requested document covered by one of the exceptions).</p> <p>If the Agency intends to give access to the document against the explicit opinion of the Member State, seek advice of an ATD scientific expert (e.g. assessment of confidential business information and intellectual property claims) and from the ATD coordinator. Contact once more the Member State in order to reach an agreement upon disclosure. In case of the continuation of a disagreement clarify with the Member State whether it invokes Article 4(5) of the ATD Regulation. If this is the case, the Agency</p>	ATD contact person(s)

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<p>shall at initial stage of processing the ATD request not disclose the (parts of the) documents against the opinion of the Member State.</p> <p>Go to 6.</p>	
<p><b>5.3 Consultation with other third-parties</b></p>	<p><b>Responsibility/Role</b></p>
<p>Unless it is clear that the document shall or shall not be disclosed, consult the third party author on the disclosure or whether it invokes one of the exceptions provided for under Article 4 of the ATD Regulation. Consult an ATD coordinator when needed.</p> <p>Send a letter to the third party author approved by the HoU or the Director. Consult an ATD coordinator.</p> <p>The third-party author consulted shall have a deadline for reply which shall be no shorter than 5 working days but must enable the Agency to abide by its own deadlines for the reply.</p> <p>Put in cc ECHA ATD functional mailbox (<a href="mailto:access-to-documents@echa.europa.eu">access-to-documents@echa.europa.eu</a>) and update ATD SP. Request as an outlook option a "Delivery and Read receipt" and ask the third party to acknowledge the receipt of email.</p> <p>If the third-party agrees with disclosure, go to 6.3.</p> <p>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 implementing rules, taking into account the legitimate interests of the third party on the basis of the information at its disposal (See article 5, ECHA/MB/12/2008).</p> <p>Following the receipt of the reply, assess whether access to the requested document can be granted in full or partially (i.e. parts of the requested document covered by one of the exceptions).</p> <p>If the Agency intends to give access to the document against the explicit opinion of the third party consulted, a letter shall be drafted to inform it of ECHA's intention to disclose the document after a 10 working day period. This period is to allow the author to inform ECHA that it intends to challenge its decision in Court.</p> <p>Seek advice of an ATD scientific expert when needed (e.g. assessment of confidential business information and intellectual property claims).</p> <p>Seek legal input and advice from an ATD coordinator.</p> <p>Send a letter to the third party author approved by the HoU or the Director.</p> <p>Put in cc ECHA ATD functional mailbox (<a href="mailto:access-to-documents@echa.europa.eu">access-to-documents@echa.europa.eu</a>) and update ATD SP. Request as an outlook option a "Delivery and Read receipt" and ask the third party to acknowledge receipt when sending the email.</p> <p>If necessary (e.g. summer holiday period), contact the third party over the phone to ensure that it has received the relevant communications.</p>	<p>ATD contact person(s)</p>
<p><b>5.4 Request for identity</b></p>	
<p>If the third-party consulted requests the information on the identity of the ATD applicant triggering the third-party consultation, consult the applicant</p>	<p>ATD coordinator</p>

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<p>informally by email on the disclosure of its identity (preferably the identity of the legal person it represents, where applicable).</p> <p>In case of a positive reply, disclose the requested information to the third party by email.</p> <p>If the applicant rejects disclosure or does not reply, inform the third-party about the negative outcome and the possibility to submit an ATD request for the actual application triggering the third-party consultation.</p>	
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## 6. Decision on the application and sending of the replies

	<b>Responsibility/Role</b>
<b>6.1 Assessment on the application of the exceptions under the ATD Regulation</b>	<b>Responsibility/Role</b>
<p>Decide if access is granted or partially granted / refused because an exception under the ATD Regulation applies.</p> <p>If partial access is granted go to 6.2.</p> <p>Seek advice of an ATD scientific expert if needed.</p> <p>Seek legal advice from an ATD coordinator.</p> <p>If full access is granted or the access is fully refused go to 6.3.</p>	ATD contact person(s)
<b>6.2 Blanking of items falling under the exceptions of the ATD Regulation</b>	<b>Responsibility/Role</b>
Carry out the redaction of the document.	ATD contact person(s)
<b>6.3 Drafting of the reply</b>	<b>Responsibility/Role</b>
<p>Draft a reply. In case of partial access or refusal of access explain which exception(s) apply.</p> <p>Seek advice of an ATD scientific expert if needed. Request the review of the draft reply by the ATD coordinator.</p>	ATD contact person(s)
<b>6.4 Reminder of the deadline</b>	<b>Responsibility/Role</b>
If no information and/or draft reply for a pending application is received, contact the ATD contact person concerned to remind the up-coming deadline.	ATD coordinator
<b>6.5 Sending of the reply</b>	<b>Responsibility/Role</b>
Send the reply signed by the competent HoU or Director to the applicant and if needed attach the relevant documents. When sending the reply put in CC the ECHA ATD functional mailbox ( <a href="mailto:access-to-documents@echa.europa.eu">access-to-documents@echa.europa.eu</a> ).	ATD contact person(s)
<b>6.6 Updating of ATD SP</b>	<b>Responsibility/Role</b>
Update SP the 'case file', the 'case activity' and the documents library.	ATD contact person(s)

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## 7. Receipt of a confirmatory application

7.1 Receipt	Responsibility/Role
<p>Receipt of a confirmatory application for access to documents.</p> <p>Forward received application to ATD functional mailbox (access-to-documents@echa.europa.eu) and to the ATD coordinator.</p>	ECHA staff member
7.2. Registration	Responsibility/Role
<p>Upon receipt, the ATD coordinator shall register the request in the ATD SP. The deadline of 15 working days for reply shall be counted from the day of the registration.</p> <p>The ATD coordinator shall send the Applicant an acknowledgement of receipt.</p> <p>The Executive Director and the Director, Head of Unit and ATD contact person(s) from the relevant Directorate shall be informed. Where appropriate, a meeting is organised with the ATD contact person(s) to agree on the approach and next steps.</p>	ATD coordinator
7.3 Third party consultation	Responsibility/Role
<p>Check the necessity to undertake/repeat a third party consultation pursuant to Article 4(4) ATD Regulation.</p> <p>If a third party consultation is undertaken, the third party shall be given a deadline for reply which shall be no shorter than 5 working days.</p> <p>If the Agency intends to give access to the document against the explicit opinion of the third party, it shall inform it of this intention to disclose the document after a 10 working day period and shall draw his attention to the remedies available to oppose disclosure.</p> <p>Section 5.3 applies <i>mutatis mutandis</i>.</p>	ATD coordinator
7.4 Extension of the deadline	Responsibility/Role
<p>Analyse whether the deadline for the reply to the confirmatory application needs to be extended (+ 15 working days). Note that pursuant to Article 8(2) of the ATD Regulation this can only be done in exceptional cases, for example in the event of applications relating to a very long document or to a very large amount of documents.</p> <p>Sections 4.1 and 4.2 apply <i>mutatis mutandis</i>.</p> <p>The applicant shall be notified in advance and detailed reasons shall be given.</p>	ATD coordinator



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7.5 Analysis	<b>Responsibility/Role</b>
<p>Analysis as to whether the initial decision should be rectified, partly rectified or confirmed. The competent Directorate taking the decision on the initial ATD application shall be consulted (Director and HoU).</p> <p>Consider a meeting of ED, LAU and/or the representatives of the Directorate taking the decision at initial stage.</p> <p>The scope, content, history of the decision-making process and possible critical points of granting access to the requested documents shall be taken into account.</p> <p>Where necessary, prepare a note on the outcome of the analysis indicating possible deviating views from the parties involved and the pros and cons of both granting and refusing access.</p>	<p>ATD coordinator</p>
7.6 Drafting decision	<b>Responsibility/Role</b>
<p>Draft the decision for full or partial rectification (full or partial access) or for confirmation of the initial decision. Send a draft of the decision for information to the Director and Head of Unit responsible at initial stage.</p> <p>The ATD contact persons shall provide the documents to be disclosed and undertake the necessary redaction, if needed.</p> <p>Circulate the decision for approval and send out the decision signed by the ED.</p>	<p>ATD coordinator</p> <p>ATD contact person</p> <p>ATD coordinator</p>
7.7 Updating of ATD SP	<b>Responsibility/Role</b>
<p>Upload records to the ATD SP.</p>	<p>ATD coordinator</p>

## 4. Flowchart

N/A

## 5. Definitions

Term or abbreviation	Definition
Access to information requests	Requests not falling within the scope of the ATD Regulation.
Access to own file	Requests made in accordance with Article 41(2) of the Charter of Fundamental Rights of the European Union.
Applicant	A legal or natural person requesting access to documents under the ATD Regulation.
ATD	Access to documents
ATD contact person(s)	Contact persons nominated by Directorates for ATD coordination purposes.
ATD coordinator	Staff member of the LAU coordinating the processing of initial applications for ATD.
ATD scientific expert	A staff member of the competent Unit/Directorate trained and/or experienced in the ATD process, competent to evaluate the application of the exceptions under the ATD Regulation from a scientific point of view.
BoA	Board of Appeal
Competent Unit/Directorate	Process-owner of the requested document.
ED	Executive Director
Competent HoU	Head of the competent Unit
LAU	Legal Affairs Unit
ATD SP	A dedicated SharePoint site used for recording and archiving records relating to the initial and confirmatory applications.
Working day	All days other than Saturdays, Sundays and "ECHA holidays". ECHA Holidays are determined each year by decision of the Executive Director and published on the ECHA website.  Working day for a third party shall mean all days other than Saturdays, Sundays and public holidays in a Member State of the third party.

## 6. Records

Record name	Security level	Comments
Incoming Application	Restricted	Storage location: ATD SP
Acknowledgment of receipt	Restricted	Storage location: ATD SP
Initial decision	Restricted	Storage location: ATD SP
Incoming letter requesting the Executive Director to review the initial decision (i.e. confirmatory ATD application)	Restricted	Storage location: ATD SP
Decision of the Executive Director on the confirmatory ATD application	Restricted	Storage location: ATD SP
Other external correspondence sent by ECHA and/or received from external (if any)	Restricted	Storage location: ATD SP

## 7. References

Associated document code	Document name
Regulation (EC) No 1049/2001	Public access to European Parliament, Council and Commission documents ("ATD Regulation")
MB/12/2008 final	Decision on the implementation of Regulation (EC) No 1049/2001 on public access to ECHA documents as amended by decision ED/04/2009 of 25 March 2009

## 8. Annexes

N/A