



**EUROPEAN UNION Community Plant
Variety Office**

***DECISION OF THE ADMINISTRATIVE COUNCIL OF THE COMMUNITY
PLANT VARIETY OFFICE of 25 March 2004 on the implementation of
Regulation (EC) No 1049/2001 of the European Parliament and of the
Council of 30 May 2001 regarding public access to documents***

**DECISION OF THE ADMINISTRATIVE COUNCIL
OF THE COMMUNITY PLANT VARIETY OFFICE**

of 25 March 2004 on the implementation of Regulation (EC) No 1049/2001¹ of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents

THE ADMINISTRATIVE COUNCIL,

Having regard to Article 33a of Council Regulation (EC) No 2100/94 of 27 July 1994,² as amended by Council Regulation (EC) No 1650/2003 of 18 June 2003³

Whereas,

(1) the Treaty on the 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 even closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen;

(2) 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;

(3) Regulation 1049 (EC) of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents has been made applicable to documents held by the Office;

(4) clear rules assist smooth administration by helping those responsible to deal accurately and rapidly with applications made by the public; it is therefore necessary to establish rules for implementing Regulation (EC) No 1049/2001 for all documents of the Office in accordance with Regulation 1049/2001;

(5) the practical arrangements should be readily available to the public,

HAS BY THIS DECISION ADOPTED THE FOLLOWING PRACTICAL ARRANGEMENTS:

¹ 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, OJ L145 of 31.5.2001, p.43
² Council Regulation (EC) No 2100/94 of 27 July 1994, OJ L227 of 1.9.94 p.1
³ Council Regulation (EC) No 1650/2003 of 18 June 2003 amending Regulation (EC) No 2100/94 on Community plant variety rights, OJ L245 of 29.9.2003 p.28

Article 1

Beneficiaries and scope

1. Citizens of the Union and natural or legal persons residing or having their registered office in a Member State shall exercise their right of access to documents of the Office under Article 255(1) of the Treaty and Article 2(1) of Regulation (EC) No 1049/2001 in accordance with these detailed rules.
2. 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 Office in one of the Member States shall enjoy the right of access to documents of the Office on the same terms as the beneficiaries referred to in Article 2(1) of Regulation (EC) No 1049/2001.

However, pursuant to Article 195(1) of the Treaty, they shall not have the option of laying a complaint before the European Ombudsman. If the Office wholly or partly refuses them access to a document after a confirmatory application, they may bring an action before the Court of First Instance of the European Communities in accordance with the fourth paragraph of Article 230 of the Treaty.

Article 2

Access applications

1. All applications for access to a document shall be sent to the Office via the Office's website (www.cpvo.europa.eu), by electronic mail (publicregister@cpvo.europa.eu), or by post or fax to the official address or fax number mentioned on the website of the Office and in the Official Gazette of the Office.
2. The Office shall answer initial and confirmatory access applications within fifteen working days from the date of registration of the application. In the case of complex or bulky applications, the deadline may be extended by fifteen working 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) No 1049/2001, the Office 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 Office 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 Regulation (EC) No 1049/2001 and shall inform the applicant of the remedies available to him.

Article 3

Treatment of initial applications

1. Without prejudice to Article 9 of these Rules, 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 of post.
2. The acknowledgement of receipt and the answer shall be sent in writing, where appropriate, by electronic means.
3. The applicant shall be informed of the response to his application by or under the authorization of, the Head of Legal Affairs. The Head of Legal Affairs shall send answers to initial applications to the President for information.
4. Any answer which is even partly negative shall inform the applicant of his right to submit, within fifteen working days from receipt of the answer, a confirmatory application to the President of the Office, asking him to reconsider the Office's position.
5. Failure by the Office to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

Article 4

Treatment of confirmatory applications

1. The decisions on confirmatory applications shall be taken by the President of the Office. The President shall send confirmatory applications for information to the Head of Legal Affairs.
2. The decision on a confirmatory application shall be notified to the applicant in writing, where appropriate by electronic means, and inform him of his 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 Office receives an application for access to a document which it holds but which originates from a third party, the Office shall check whether one of the exceptions provided for by Article 4 of Regulation (EC) No 1049/2001 applies.
2. If, after that examination, the Office 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.

3. The Office shall grant the application without consulting the third-party where:
 - (a) the document requested has already been disclosed either by the author or under Regulation (EC) No 1049/2001 or similar provisions;
 - (b) the disclosure, or partial disclosure, of its contents would not obviously affect one of the interests referred to in Article 4 of Regulation (EC) No 1049/2001.

4. In all the other cases, the third-party shall be consulted. In particular, if the application for access concerns a document originating from a Member State, the Office shall consult the originating authority where:
 - (a) the document was forwarded to the Office before the date from which Regulation (EC) No 1049/2001 applies;
 - (b) the Member State has asked the Office 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 author consulted shall have a deadline for reply which shall be no shorter than five working days but must enable the Office 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 Office 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 Office 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 10-working day period and shall draw his attention to the remedies available to him to oppose disclosure.

7. Where a Member State or an EU Institution or an Agency receives an application for access to a document originating from the Office, it may, for the purposes of consultation, contact the Office. The President of the Office shall reply to the application.

Article 6

Treatment of applications for access to classified documents

1. Where an application for access concerns a sensitive document as defined in Article 9 (1) of Regulation (EC) No 1049/2001, it shall be handled by persons entitled to acquaint themselves with the document.

2. Reasons shall be given on the basis of the exceptions listed in Article 4 of Regulation (EC) No 1049/2001 for any decision refusing access to all or part of a classified document. If it proves that access to the requested document cannot be refused on the basis of these exceptions, the Office shall ensure that the document is declassified before sending it to the applicant.

3. The agreement of the originating authority shall be required if access is to be given to a sensitive document.

Article 7

Exercise of the right of access

1. Documents shall be sent by mail, fax or, if available, by e-mail, depending on the application. 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. Consultation of documents on the spot, as mentioned in Article 10 of Regulation 1049/2001, shall take place on the premises of the Office. However, on request, consultation of documents may take place on the premises of the national agencies or sub-offices designated pursuant to Article 30 (4) of the Basic Regulation on the territory of the Member State in which the person making the request is resident or has his seat or establishment, if the document requested is held by such a sub-office.
3. 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 the web address on the web-site of the Office.
4. If the volume of the documents requested exceeds twenty pages, the applicant may be charged a fee of EUR 0,10 per page plus sending costs. The charges for other media shall be decided on a case by case basis but shall not exceed a reasonable amount.

Article 8

Measures facilitating access to the documents

1. In order to make citizens' rights deriving from Regulation (EC) No 1049/2001 effective, the Office 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), its serial number and other useful references, an indication of its author and the date of its creation or adoption.
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 full text.

Article 9

Documents directly accessible to the public

1. This Article applies only to documents drawn up or received after 1 October 2004 which is the date of which Regulation (EC) No 1049/2001 applies to documents of the Office.
2. The following documents shall be automatically provided on request and, as far as possible, made directly accessible by electronic means:

- (a) Documents adopted by the Office or the Administrative Council for publication in the Official Gazette of the Office;
- (b) Documents originating from third parties which have already been disclosed by their author or with his consent;
- (c) Documents already disclosed following a previous application
- (d) Register on the website of the Office with information on applications and grants
- (e) Decisions of the Board of Appeal of the Office
- (f) Annual reports of the Office

Article 10

Entry into force

This Decision shall enter into force on 1 April 2004.

Article 11

Publication

This decision shall be published in the Official Gazette of the Community Plant Variety Office

Signed: Date:25 March 2004

Carlos Pereira Godinho
Chairman of the Administrative Council