

**PUBLIC ACCESS TO DOCUMENTS – CONSOLIDATED VERSION - 2019
OF THE 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 THE COUNCIL OF 30 May 2001**

FURTHER TO THE TWO FOLLOWING AMENDMENTS OF THE ADMINISTRATIVE COUNCIL (AC)

- 1. Signed in Brussels on 9.10.14 by the then Chair of the AC, Bronislava Batorova
AMENDMENT TO 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 (“the DECISION”)**
- 2. Signed in Brussels on 19.9.19 by the current Chair of the AC, Bistra Pavlovska
AMENDMENT No. 2 TO THE DECISION OF THE ADMINISTRATIVE COUNCIL OF THE
COMMUNITY PLANT VARIETY RIGHT 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 (“THE DECISION”)**

Whereas,

- (1) pursuant to Article 12 of Commission Regulation (EC) No 874/2009, the President of the Office has attached a registry to the Board of Appeal of the Office;
- (2) pursuant to Article 51 of Commission Regulation (EC) No 874/2009, unless otherwise provided, the provisions relating to proceedings before the Office shall apply to appeal proceedings *mutatis mutandis*;
- (3) there is a need to define the public access responsibilities of the Chair of the Board of Appeal, of the Alternate Chair of the Board of Appeal, and of the Board of Appeal Registrar;
- (4) the role of the Board of Appeal Registrar is to assist the Board of Appeal in the processing of appeals. The Registrar shall in particular be responsible of the Board of Appeal register of the CPVO.



DECISION OF THE ADMINISTRATIVE COUNCIL OF THE COMMUNITY PLANT VARIETY OFFICE

of 25 March 2004 on the implementation of Regulation (EC) No 1049/2001 (see footnote 1) 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 (see footnote 2), as amended by Council Regulation (EC) No 1650/2003 of 18 June 2003 (see footnote 3)

Whereas,

- (1) the Treaty on the Functioning of the European Union enshrines the principle of transparency in the third paragraph of Article 15, according to which any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, offices and agencies, whatever their medium;
- (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 No.1049/2001 (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, OJL245 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 15 (ex Article 255 TEC) of the Treaty on the Functioning of the European Union and Article 2(1) of Regulation (EC) No 1049/2001 in accordance with these detailed rules.
 - 2.1 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.
 - 2.2 However, pursuant to Article 228 of the Treaty on the Functioning of the European Union, they shall have the option of laying a complaint before the European Ombudsman. If the Office wholly or partially refuses them access to a document after a confirmatory application, they may bring an action before the Court of Justice of the European Union in accordance with Article 263 of the Treaty on the Functioning of the European Union.
3. Documents of the Board of Appeal register are within the scope of this Article.

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.
 - 2.1 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.
 - 2.2 The Registrar of the Board of Appeal 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.
- 3.1 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.
- 3.2 If an application is imprecise, as referred to in Article 6(2) of Regulation (EC) No. 1049/2001, the Registrar of the Board of Appeal shall invite the applicant to provide additional information making it possible to identify the documents requested; the deadline to reply shall run only from the time when the Board of Appeal registry has got 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.
- 3.1. For Documents held by the Office: The applicant shall be informed of the response to his application by or under the authorization of, the Head of Legal Unit. The Head of Legal Unit shall send answers to initial applications to the President for information. The Head of the Legal Unit may delegate his powers to a suitably qualified member of the Office 'staff.
- 3.2. For documents held by the Board of Appeal Registry: The Registrar of the Board of Appeal shall be responsible for the treatment of initial applications for access to Board of Appeal documents held in the Board of Appeal register. The applicant shall be informed of the response to its application by or under the authorisation of the Registrar of the Board of Appeal. The Registrar of the Board of Appeal shall send answers to initial applications to the Chairperson of the Board of Appeal or Alternate Chairperson 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, and or the Chairman of the CPVO Board of Appeal asking him to reconsider the Office's position, or the Board of Appeal Registry's position.
5. Failure by the Office, or by the Board of Appeal Registry, 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 Unit.
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.
3. The decisions on confirmatory applications for access to Board of Appeal documents held in the register of the Board of Appeal shall be taken by the Chairperson of the Board of Appeal or the Alternate Chairperson of the Board of Appeal.
4. The decision on a confirmatory application for public access to Board of Appeal documents shall be notified to the applicant in writing, where appropriate by electronic means, and inform him/her of his/her right to bring an action before the General Court or to lodge a complaint with the European Ombudsman. The chairperson of the Board of Appeal, or the Alternate Chairperson shall be responsible for the treatment of the confirmatory applications for access to documents.

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.
8. This Article on consultations with third parties applies *mutatis mutandis* to the Board of Appeal register.

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

This Article applies only to documents drawn up or received after 1 April 2004, which is the date at which Regulation (EC) No 1049/2001 applies to documents of the Office and of the Board of Appeal register. 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

The Decision of 25 March 2004 on practical arrangements entered into force on 1 April 2004. It was taken pursuant to COUNCIL REGULATION (EC) No 1650/2003 of 18 June 2003 amending Regulation (EC) No 2100/94 on Community plant variety rights, whereby the Public Access Directive became applicable to documents held by the



CPVO, which entered into force on 1 October 2003 and required for the practical arrangements to be made within 6 months i.e. by end of April 2004.

The Decision of 9 October 2014 - amending the rules adopted on 1 April 2004 - entered into force on 9 October 2014.

The Decision of 19 September 2019 - further amending the rules adopted on 1 April 2004 so as to include Board of Appeal documents – entered into force on 19 September 2019.

Article 11

Publication

The Decision of 25 March 2004 was published in the Official Gazette of the Community Plant Variety Office.

The Decision of 9 October 2014 was published in the Official Gazette of the Community Plant Variety Office.

The Decision of 19 September 2019 was published in the Official Gazette of the Community Plant Variety Office.