
DECISION No GB/2022/13
of
the European Cybersecurity Industrial, Technology and Research Competence Centre
Governing Board

on laying down the rules for applying Regulation (EC) No 1049/2001 with regard to the
European Cybersecurity Industrial, Technology and Research Competence Centre
documents

THE GOVERNING BOARD,

Having regard to the Treaty on the Functioning of the European Union (‘TFEU’),¹

Having regard to European Parliament and Council Regulation (EU) No 2021/887 of 20 May 2021 establishing the European Cybersecurity Industrial, Technology and Research Competence Centre (‘ECCC’), in particular Article 37,²

Having regard to 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 (‘Regulation (EC) No 1049/2001’),³

Having regard to the Decision No GB/2021/1 of the Governing Board of the European Cybersecurity Industrial, Technology and Research Competence Centre on Adopting its Rules of Procedure,

WHEREAS:

1) Article 37(1) and (2) of the founding Regulation of the ECCC states that the Regulation (EC) No 1049/2001 shall apply to the documents held by the ECCC. The Governing Board shall adopt arrangements for implementing the Regulation (EC) No 1049/2001.

2) Pursuant to Article 37(3), decisions taken by the ECCC in compliance with Article 8 of the Regulation (EC) No 1049/2001 may be the subject of a complaint to the European Ombudsman under Article 228 TFEU or of an action before the Court of Justice of the European Union under Article 263 TFEU.

3) In principle, all documents should be accessible to the public. However, certain public and private interests shall be protected by the way of exceptions, where necessary. For example, the ECCC’s task, among others, in line with its founding Regulation is to manage proposals from potential beneficiaries under the Horizon Europe and Digital Europe

¹ Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47–390.

² OJ L 202, 8.6.2021, p. 1–31.

³ OJ L 145, 31.5.2001, p. 43–48.

programmes. Such proposals may not to be accessible to the public as they could reveal commercial secrets of the proposers. Furthermore, the ECCC may handle sensitive information pertaining to national security interest of one or more Member States in the context of discussions on the strategic Agenda, or in the context of specific cybersecurity grants or procurements involving Member State authorities.

HAS DECIDED AS FOLLOWS:

Article 1 - Definitions

For the purpose of this Decision:

- a) ‘Document’ shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual recording) concerning a matter relating to the policies, activities and decisions falling within the ECCC’s sphere of responsibility, and held by the ECCC;
- b) ‘Third party’ shall mean any natural or legal person, or any entity outside the ECCC, including Member States, other institutions, bodies and agencies of the European Union, international organisations or authorities of third countries;
- c) ‘Sensitive document’ means any document originating from the ECCC, European institutions or the agencies established by them, from Member States, third countries or international organisations, classified as at least ‘CONFIDENTIAL’ in accordance with the security rules of the European Commission, which protect essential interests of the ECCC, the European Union or one or more of the Member States in the areas covered by Article 3(1)(a), notably public security, defence and military matters.

Article 2 - Beneficiaries and scope

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the ECCC in compliance with rules of the Regulation (EC) No 1049/2001 and this Decision.
2. In accordance with Article 2(2) of the Regulation (EC) No 1049/2001, the ECCC may, subject to the principles, conditions and limits defined in the Regulation (EC) No 1049/2001 and this Decision, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.
3. In accordance with Article 2(3) of the Regulation (EC) No 1049/2001, this Decision shall apply to all documents held by the ECCC, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of the ECCC.
4. Sensitive documents shall be subject to special treatment in accordance with Article 9 of this Decision.

Article 3 - Exceptions

1. The ECCC 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 European Union or a Member State.
 - b) privacy and integrity of the individual, in particular in accordance with the European Union legislation regarding the protection of personal data.
2. The ECCC shall refuse access to a document where disclosure would undermine the protection of:
 - commercial interests of a natural or legal person, including intellectual property,
 - court proceedings and legal advice,
 - the purpose of inspections, investigations and audits,unless there is an overriding public interest in disclosure.
3. Access to a document, drawn up by the ECCC for internal use or received by the ECCC, which relates to a matter where the decision has not been taken by the ECCC, shall be refused if disclosure of the document would seriously undermine the ECCC's decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the ECCC concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the ECCC's decision-making process, unless there is an overriding public interest in disclosure.
4. As regards third party documents, the ECCC shall consult the third party in line with the procedure established in Article 7 with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.
5. A Member State may request the ECCC not to disclose a document originating from the Member State without its prior agreement.
6. If only parts of the requested document are covered by any exception, the remaining parts of the document shall be released.
7. The exceptions as laid down in paragraph 1 to 3 shall only apply for the period during which the 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 interest and in case of

sensitive documents the exceptions may, if necessary, continue to apply after this period.

Article 4 - Applications for access to documents

1. Applications for access to documents shall be made in any written form (e-mail or post to the ECCC) and in a sufficiently precise manner to enable the ECCC to identify the document. The applicant is not obliged to state reasons for the application.
2. If an applicant is not sufficiently precise, the ECCC shall ask the applicant to clarify the application and shall assist the applicant in doing so, for example, by providing information on the use of the public registers of the documents.
3. In the event of an application relating to a very long document or to a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution.
4. The ECCC shall publish on its website the relevant contact details to which applications are to be sent.

Article 5 - Processing of initial applications

1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant in any written form.
2. Within 15 working days from registration of the application, the ECCC shall either grant access to the document requested and provide access in accordance with the Article 10 of the Regulation (EC) No 1049/2001 and Article 10 of this Decision, or in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 3 of this Article.
3. In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the ECCC's reply, make a confirmatory application asking the ECCC to reconsider its position.
4. In the event of an imprecise application, the time limit provided in paragraph 2 shall start to run from the day of the ECCC officially received the information necessary to identify the documents in questions.
5. 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 in

paragraph 2 and 4 of this Article may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

6. Failure by the ECCC to reply within the prescribed time limit shall entitle the applicant to make a confirmatory application.

Article 6 - Processing of confirmatory applications

1. A confirmatory application shall be handled promptly. Within 15 working days from registration of such an application, the ECCC shall grant access to the document requested and provide access in accordance with Article 10 of Regulation (EC) No 1049/2001 and Article 10 of this Decision 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 ECCC shall inform the applicant of the remedies open to her or him, namely instituting court proceedings against the ECCC and/or making a complaint to the European Ombudsman.
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 limit provided for in the paragraph 1 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.
4. Failure by the ECCC to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the institution and/or make a complaint to the Ombudsman.

Article 7 - Consultations with third parties

1. When the ECCC receives an application for access to documents, which originates from a third party but the ECCC holds it, the ECCC shall assess whether the exceptions listed in Article 3 of this Decision apply.
2. The ECCC shall refuse to grant access to all or part of the document without consulting the third party, if the document requested or parts of it are clearly covered by one or several exceptions listed in Article 3 of this Decision. The ECCC shall send the reply, state the reason of refusal to the applicant.
3. The ECCC shall grant access to documents originated from a third party without consulting the third party, if
 - a) the document requested has already been disclosed either by its author or under Regulation (EC) No 1049/2001, this Decision or similar provisions;
 - b) access to the content of the documents originating from third parties manifestly does not affect one of the protected interest under the exceptions listed in Article 3 of this Decision; *or*

- c) the third party concerned has agreed in writing with the public disclosure of the document under Regulation (EC) No 1049/2001.
4. In all other cases, the third party shall be consulted. In particular, if an application for granting access to documents is originating from a Member State, the ECCC shall consult the originating authority.
5. The third party shall be consulted within a period that allows the ECCC to respect its deadline to reply the application in line with Article 5 and Article 6 of this Decision.
6. The ECCC shall take a decision in compliance with Article 3 of this Decision on the basis of the information at the ECCC's disposal:
 - a) in case of the absence of an answer of the third party within the time period defined in Article 5 and Article 6;
 - b) if the third party is untraceable; *or*
 - c) if the third party is unidentifiable.
7. If the ECCC intends to grant access to a document against the explicit objections to disclosure of the third party, without the prejudice to paragraph 5 of Article 3 of this Decision, the ECCC shall inform the third party of its intention to disclose the document in 10 working days and shall draw their attention to the remedies available to them.

Article 8 - Documents in the Member States

1. Where a Member State receives a request for a document in its possession, originating from the ECCC, unless it is clear that the document shall or shall not be disclosed, the Member State shall consult with the ECCC in order to take a decision that does not jeopardise the attainment of the objectives of this Decision.
2. The Member State may instead refer the request to the ECCC.

Article 9 - Treatment of sensitive documents

1. Applications for access to sensitive documents under the procedure laid down in Article 5 and Article 6 shall be handled only by those persons who have a right to acquaint themselves with those documents. These persons shall also, without prejudice to Article 11(2), assess which references to sensitive documents could be made in the public register.
2. Sensitive documents shall be recorded in the register or released only with the consent of the originator.
3. The ECCC shall give the reasons for its decision to refuse access to a sensitive document in a manner, which does not harm the interests protected in Article 3 of this Decision.

4. Member States shall take appropriate measures to ensure that when handling applications for sensitive documents the principles in this Article and Article 3 are respected.

Article 10 - Exercise of the right of access to documents

1. Documents shall preferably be sent electronically, unless specified otherwise or impractical.
2. 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 20 A4 pages and direct access in electronic form or through the register shall be free of charge.
3. If a document has already been released by the ECCC and is easily accessible to the applicant, the ECCC may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document. The ECCC's answer shall consist of the public references and/or the place where the document is available and where appropriate of its web address.

Article 11 - Measures facilitating access to the documents

1. A public register of documents shall be established to allow citizens to exercise their rights in compliance with Regulation (EC) No 1049/2001, in particular Article 11. References to those documents shall be made in a manner, which does not undermine the protection of interests set out in Article 3 of this Decision.
2. For each document, the register shall contain a reference number, the subject matter and/or a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. References shall be made in a manner which does not undermine protection of the interests in Article 3 of this Decision.
3. The ECCC shall as far as possible make documents directly accessible to the public in electronic form or through a register in compliance with Article 12 of the Regulation (EC) No 1049/2001.
4. ECCC shall take the requisite measures to inform the public of the rights they enjoy under this Decision. Member States shall cooperate with the ECCC in providing information to the citizens.

Article 12 - Administrative practice in the ECCC and reports

1. The ECCC shall develop good administrative practices in order to facilitate the exercise of the right of access guaranteed by this Decision in line with Article 12 of Regulation (EC) No 1049/2001.

2. The ECCC shall publish annually a report for the preceding year including the number of cases in which the ECCC refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register.

This Decision shall take effect on the day following that of its adoption.

Done at Bucharest, on 24 June 2022

For the European Cybersecurity
Industrial, Technology and
Research Competence Centre

The Chairperson of the Governing
Board