

**Decision of the Management Board 05/2017/MB**

**On the implementation of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to documents**

**Adopted by the Management Board**

**on 1<sup>st</sup> of May 2017**

## THE MANAGEMENT BOARD,

Having regard to Regulation (EU) 2015/2219 of the European Parliament and of the Council of 25 November 2015 on the European Union Agency for Law Enforcement Training (CEPOL) and replacing and repealing Council Decision 2005/681/JHA<sup>1</sup> (hereinafter referred to as ‘the CEPOL Regulation’), and in particular Article 28 thereof,

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<sup>2</sup>,

Having regard to Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>3</sup>

### Whereas:

- (1) By virtue of Article 28(1) of the CEPOL Regulation, Regulation (EC) No 1049/2001 applies to documents held by CEPOL.
- (2) According to Article 28(2) of the CEPOL Regulation, it is for the Management Board of CEPOL to adopt detailed rules for implementing Regulation (EC) No 1049/2001.
- (3) Application of the present Decision shall be without prejudice to the application of Regulation (EC) No 45/2001,

### HAS ADOPTED THIS DECISION:

#### *Article 1* *Purpose*

The present Decision prescribes the arrangements under which the public shall be granted access to documents held by CEPOL.

#### *Article 2* *Beneficiaries and Scope*

1. Any citizen of the Union and any natural or legal person residing or having

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<sup>1</sup> OJ L319, 4.12.2015, p.1.

<sup>2</sup> OJ L 145, 31.5.2001, p.43.

<sup>3</sup> OJ L 8, 12.1.2001, p.1

its registered office in a Member State, has a right of access to documents of the Agency, subject to the principles, conditions and limits defined in these rules.

2. CEPOL may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.

3. These rules shall apply to all documents held by CEPOL, that is to say, documents drawn up or received by it and in its possession.

### *Article 3* *Exceptions*

1. CEPOL 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 Community or a Member State,

(b) the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

2. CEPOL 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 CEPOL for internal use or received by CEPOL, which relates to a matter where the decision has not been taken by CEPOL, shall be refused if disclosure of the document would seriously undermine the decision-making process of CEPOL, 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 CEPOL shall be refused even

after the decision has been taken if disclosure of the document would seriously undermine the decision-making process of CEPOL, unless there is an overriding public interest in disclosure.

4. As regards third-party documents, CEPOL shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable.

5. A Member State may request the institution 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 of the exceptions, the remaining parts of the document shall be released.

7. The exceptions as laid down in paragraph 1 to 3 shall only apply to the period during which 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 integrity or privacy of individuals or commercial interests and in the case of sensitive documents, the exceptions may, if necessary, continue to apply after this period.

#### *Article 4* *Applications for access*

1. Applications for access to a document shall be sent in writing to the Agency by electronic mail, by mail or by fax. The addresses to which applications are to be sent are listed in the Annex to this Decision. The Executive Director may decide to update the Annex as necessary.

2. If an application is not sufficiently precise, CEPOL shall invite the applicant to clarify the application and shall assist the applicant in doing so. The deadline to reply as set in Article 6 of the present Decision, shall continue to run only after CEPOL has received such a clarification

3. In the event of an application relating to a very long document or to a very large number of documents, CEPOL may confer with the application informally, with a view to finding a fair solution.

#### *Article 5* *Processing of initial applications*

1. An application for access to a document shall be handled promptly. An acknowledgment of receipt, where appropriate by electronic means, shall be sent to the applicant unless the reply can be sent immediately.

2. Within 15 working days from registration of the application, CEPOL shall either grant access to the document requested and provide access in accordance with Article 10 within that period 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 5 of this Article.
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 time-limit provided for in paragraph 2 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.
4. The applicant shall be informed of the reply to his application by the Head of the Operations Department of CEPOL.
5. In the event of a total or partial refusal, the applicant may within 15 working days of receiving the institution's reply, make a confirmatory application asking CEPOL to reconsider its position.
6. Failure by CEPOL to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

*Article 6*  
*Processing of confirmatory applications*

1. The decisions on confirmatory applications shall be made by the Executive Director of CEPOL.
2. A confirmatory application shall be handled promptly. Within 15 working days from registration of the application, CEPOL shall either grant access to the document requested and provide access in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal.
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 time-limit provided for in paragraph 2 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.
4. In the event of a total or partial refusal, CEPOL shall inform the applicant of the remedies open to him or her, namely instituting court proceedings against CEPOL and/or making a complaint to the Ombudsman.
5. Failure by CEPOL 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*

1. Where CEPOL receives an application for access to a document which it holds but which originates from a third party, CEPOL shall check whether one of the exceptions provided for by Article 4 of Regulation (EC) No 1049/2001 applies.
2. If, after that examination, CEPOL considers that access must be refused in accordance with one of the exceptions provided for by Article 4 of Regulation (EC) No 1049/2001, the decision to refuse access shall be sent to the applicant without consultation of the third-party author.
3. Without prejudice to paragraph 7, CEPOL shall grant the access without consulting the third-party author where:
  - (a) the document requested has already been disclosed either by its author or under Regulation (EC) No 1049/2001 or similar provisions,
  - (b) it is clear that the disclosure, or partial disclosure, of its contents would obviously not affect one of the interests referred to in Article 4 of Regulation (EC) No 1049/2001.In all other cases, the third-party author shall be consulted.
5. The third-party author consulted shall have a deadline for reply which shall be no shorter than five working days but must allow CEPOL to abide by its own deadlines for reply.
6. In the absence of an answer within the prescribed period, or if the third party is untraceable or not identifiable, CEPOL 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.
7. If CEPOL 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 ten working day period and shall draw his attention to the remedies available to him to oppose disclosure.
8. If an application for access concerns a document originating from a Member State, CEPOL shall consult the originating authority where the Member State has requested CEPOL not to disclose the document without its prior agreement, in accordance with Article 4(5) of Regulation (EC) No 1049/2001.

*Article 8  
Treatment of CEPOL classified documents*

1. Applications for access to CEPOL classified documents shall be handled only

by those persons who have a right to acquaint themselves with those documents.

2. In case CEPOL decides to refuse access to a classified document it shall give reasons for its decision, in a manner which does not harm the interests protected in Article 3.

3. In case access to a classified document is to be granted, the CEPOL staff handling the application shall ensure that the document is declassified prior to disclosure.

*Article 9  
Access following an application*

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, where available, an electronic copy, according to the applicant's preference. 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.

2. If document has already been released by the institution concerned and is easily accessible to the applicant, the institution may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.

*Article 10  
Direct access in electronic form or through a register*

1. CEPOL shall, as far as possible, make documents directly accessible to the public in electronic form or through a register.

*Article 11  
Documents directly accessible to the public*

1. The following documents shall be made directly accessible on the website of CEPOL:

- (a) the multiannual and annual work programme of CEPOL,
- (b) consolidated annual activity report of CEPOL,

(c) the rules of procedure and the decisions of the Management Board of CEPOL,

(d) agendas of the meetings of the Management Board of CEPOL,

(e) minutes of the meetings of the Management Board of CEPOL, after their approval.

2. The following documents shall be provided on request and, as far as possible, made directly accessible by electronic means:

(a) documents originating from third parties which have already been disclosed by their author or with his consent,

(b) documents already disclosed following a previous application.

The present Decision shall take effect on the date of its adoption.

Done at the Netherlands, 1 May 2017

*For the Management Board*

*<Signature on file>*

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*Mrs Frederike Everts MPA  
Chair of the Management Board*