

DECISION
OF THE GOVERNING BOARD OF THE EUROPEAN POLICE COLLEGE
17/2006/GB
ADOPTING RULES FOR
ACCESS TO DOCUMENTS OF THE EUROPEAN POLICE COLLEGE

Adopted by the Governing Board
on 10 May 2006

THE GOVERNING BOARD,

Having regard to the Council Decision 2005/681/JHA of 20 September 2005 establishing a European Police College (hereinafter referred to as “CEPOL”), and in particular Article 20 thereof;

Having regard to the proposal of the Director;

Whereas the Governing Board shall adopt rules for access to CEPOL documents, taking into account the principles and limits stated in 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;

HAS ADOPTED THESE RULES:

*Article 1
Purpose*

The purpose of these rules is:

- (a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to documents of the European Police College (hereinafter referred to as “CEPOL”) in such a way as to ensure the widest possible access to documents;
- (b) to establish practical rules ensuring the easiest possible exercise of this right; and
- (c) to promote good administrative practice on access to documents.

*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 CEPOL, subject to the principles, conditions and limits defined by 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 so to say, documents drawn up or received by it and in its possession, in all areas of CEPOL’s activities.
- (4) Access to certain documents shall be refused by virtue of application of one of the exceptions mentioned in Article 4 of this decision.

- (5) CEPOL's documents are subject to classification, which restricts or prevents access to them. Rules for the classification of CEPOL's documents are set out in the Annex to this decision.

Article 3
Definitions

- (1) "Document" shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within CEPOL's sphere of responsibility;
- (2) "Third party" shall mean any natural or legal person, or any entity outside CEPOL, including the Member States, other Community or non-Community institutions and bodies and third countries.
- (3) "Classified documents" shall mean documents that have been classified by CEPOL in accordance with its security rules in order to protect essential interests of CEPOL, the European Union or one or more Member States or third countries.

Article 4
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) privacy and the 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:
- a) commercial interests of a natural or legal person, including intellectual property,
 - b) court proceedings and legal advice,
 - c) the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.
- (3) Access to a document, produced, received or in possession of CEPOL shall be refused if disclosure of the document would seriously undermine the 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 CEPOL shall be refused even after the decision has been taken if disclosure of the document would seriously undermine CEPOL's decision-making process, unless there is an overriding public interest in disclosure.

- (4) As regards third-party documents, CEPOL shall consult the third party in accordance with the procedure as laid down in Article 9 of this Decision 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) National training institutes in the Member States may request CEPOL not to disclose a document originating from that training institute without its prior agreement.
- (6) If only parts of the requested documents are covered by any of the exceptions, the remaining parts of the documents shall be released.
- (7) The exceptions as laid down in paragraphs 1 to 3 of this Article shall only apply for the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum of 30 years. In the case of documents covered by the exceptions relating to privacy or commercial interests and in the case of classified documents, the exceptions may, if necessary, continue to apply after this period.

Article 5
Requests for access

- (1) Applications for access to a document, which is not publicly available, shall be made in any written form, including electronic form, in the English language and in a sufficiently precise manner to enable CEPOL to identify the document. The applicant is not obliged to state reasons for the application.
- (2) If an application is not sufficiently precise, CEPOL 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 public registers of documents.
- (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 applicant informally, with a view to finding a fair solution.
- (4) CEPOL shall provide information and assistance to citizens on how and where applications for access to documents can be made.

Article 6
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. 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 9 of this Decision 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 2 of this Article.
- (2) In the event of a total or partial refusal, the applicant may, within 15 working days of receiving CEPOL's reply, make a confirmatory application asking CEPOL to reconsider its position.
- (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 1 of this Article may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.
- (4) Failure by CEPOL to reply within the prescribed time limit shall entitle the applicant to make a confirmatory application.

Article 7
Processing of confirmatory applications

- (1) A confirmatory application shall be handled promptly. Within 15 working days from receipt of such a request, CEPOL shall either grant access to the document concerned and provide access in accordance with Article 9 of this Decision within that period or, in a written reply, state the reasons for the total or partial refusal. 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, under the conditions laid down in Articles 230 and 195 of the EC Treaty, respectively.
- (2) 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 1 of this Article may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.
- (3) Failure by CEPOL to reply within the prescribed time limit shall be considered as a negative reply and entitles the applicant to institute court proceedings against CEPOL and/or make a complaint to the Ombudsman, under the relevant provisions of the EC Treaty.

*Article 8
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 this Decision applies.
- (2) If, after that examination, CEPOL considers that access to it must be refused under one of the exceptions provided for by Article 4 of this Decision, the negative answer shall be sent to the applicant without consultation of the third-party author.
- (3) CEPOL shall grant the application without consulting the third-party author where the document requested has already been disclosed either by its author or under Regulation (EC) No1049/2001 or similar provisions.
- (4) Unless the document originates from a Member State, CEPOL shall grant the application without consulting the third-party author where it is obvious that the disclosure, or partial disclosure, of its contents would not affect one of the interests referred to in Article 4 of this Decision.
- (5) In all the other cases, and in particular if an application for access concerns a document originating from a Member State, the third-party author shall be consulted.
- (6) The third-party author consulted shall have a deadline for reply, which shall be no shorter than five working days but must enable CEPOL to abide by its own deadlines for the reply. 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 this decision, 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.

*Article 9
Treatment of classified documents*

- (1) Classified documents shall be released only with the consent of the originator.
- (2) If CEPOL decides to totally or partially refuse access to a classified document it shall give the reason for its decision in a manner which does not harm the interests protected by Article 4.

Article 10
Access following an application

- (1) Applicants 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. Consultation on the spot, copies less than 20 A4 pages and direct access in electronic form or through the register shall be free of charge.
- (2) If a document has already been released by the institution concerned and is easily accessible to the applicant, CEPOL may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.
- (3) Documents shall be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) with full regard to the applicant's preference.

Article 11
Register of documents

- (1) To make citizen's rights under this decision effective, CEPOL shall provide public access to an electronic register of documents available in particular through CEPOL's Internet site.

References to documents shall be recorded in the register without delay.

- (2) For each document the register shall contain a reference number, the subject matter and/or a short description 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 4 of this Decision.
- (3) CEPOL shall immediately take the measures necessary to establish a register which shall be operational by 30 June 2007.

Article 12
Information

CEPOL shall take the requisite measures to inform the public of the rights they enjoy under these rules.

Article 13
Use and reproduction of documents

These rules shall be without prejudice to any rules on copyright which may limit a third party's right to reproduce or exploit released documents.

Article 14
Report

CEPOL shall include in its annual report the number of requests for access to CEPOL's documents, the number of refusals, and the reasons for such refusals.

Article 15
Entry into force

These rules shall enter into force on the day following that of their adoption. They shall be applicable from 1 January 2007.

Done at Vienna, 10 May 2006

For the Governing Board

A handwritten signature in black ink, appearing to read 'János Fehérváry', written in a cursive style.

János Fehérváry
Chair of the Governing Board