

DECISION OF THE COURT OF JUSTICE OF THE EUROPEAN UNION

of 11 December 2012

concerning public access to documents held by the Court of Justice of the European Union in the exercise of its administrative functions

(2013/C 38/02)

THE COURT OF JUSTICE OF THE EUROPEAN UNION,

Having regard to Article 15(3) of the Treaty on the Functioning of the European Union,

Having regard the opinion of the Administrative Committee of 2 July 2012,

considering that it is necessary to set out rules concerning public access to documents held by the Court of Justice of the European Union in the exercise of its administrative functions,

HEREBY ADOPTS THE PRESENT DECISION:

Article 1.

Scope

1. The present decision shall apply to all documents held by the Court of Justice of the European Union, that is to say, documents drawn up or received by it and in its possession, as part of the exercise of its administrative functions.

2. This decision applies without prejudice to public rights of access to the documents of the Court of Justice of the European Union which might follow from instruments of international law or acts implementing them.

Article 2.

Beneficiaries

1. Any citizen of the European Union and any natural or legal person residing or having its registered office in a Member State has a right of access to the documents of the Court of Justice of the European Union listed in Article 1(1) subject to the conditions laid down in the present decision.

2. The Court of Justice of the European Union may, subject to the same conditions, grant access to documents to any natural or legal person not residing or having its registered office in a Member State.

Article 3.

Exceptions

1. The Court of Justice of the European Union shall refuse access to a document where disclosure would undermine the protection of:

a) 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) the privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data.

2. The Court of Justice of the European Union 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.

3. Access to a document drawn up by the Court of Justice of the European Union for internal use or received by it, which relates to a matter on which the decision has not been taken by it, shall be refused if disclosure of the document would seriously undermine the decision-making process of the Court of Justice of the European Union.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the Court of Justice of the European Union shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the decision-making process of the Court of Justice of the European Union.

4. The exceptions set out in paragraphs 2 and 3 shall not apply if there is an overriding public interest in disclosure of the document concerned.

5. If only parts of the requested document are covered by one or more of the exceptions set out in paragraphs 1, 2 and 3, the remaining parts of the document shall be disclosed.

6. The exceptions as laid down in paragraphs 1, 2 and 3 shall apply only for 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 privacy or commercial interests, the exceptions may, if necessary, continue to apply after this period.

7. The present article shall apply without prejudice to the provisions of Article 9.

Article 4.

Submission of initial applications

1. Applications for access to a document of the Court of Justice of the European Union must be made in one of the official languages of the European Union on a form which is available on the Internet site of the Court of Justice of the European Union. It must be sent by post, fax or electronically in accordance with the instructions set out on the abovementioned Internet site.

2. Applications shall be made in a sufficiently precise manner and shall contain, in particular, the elements enabling identification of the document or documents requested and the name and address of the applicant.

3. If an application is not sufficiently precise, the Court of Justice of the European Union shall ask the applicant to clarify the application and shall assist the applicant in doing so.

4. In the event of an application relating to a very long document or to a very large number of documents, the Court of Justice of the European Union may confer with the applicant informally, with a view to finding a fair solution.

5. The applicant is not obliged to state reasons for the application.

Article 5.

Processing of initial applications

1. A written acknowledgement of receipt (post, fax or electronic mail) shall be sent to the applicant immediately upon registration of the form containing the application.

2. Within a maximum of one month from registration of the application, the Court of Justice of the European Union shall grant access to the document requested by supplying it to the applicant.

3. If the Court of Justice of the European Union is not in a position to grant access to the document requested, it shall, within the period laid down in paragraph 2 and in writing, inform the applicant of the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application within one month of receipt of the reply.

4. 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 one month, provided that the applicant is notified in advance and that detailed reasons are given.

5. In the case referred to in Article 4(3), the period for replying shall not start to run until the Court of Justice of the European Union has received additional information from the applicant to make the application sufficiently precise.

Article 6.

Submission of confirmatory applications

1. In the event of a total or partial refusal of his or her initial application, the applicant may make a confirmatory application.

2. Failure by the Court of Justice of the European Union to reply within the prescribed time limit shall entitle the applicant to make a confirmatory application.

3. The confirmatory application must be sent to the Court of Justice of the European Union within one month either of receipt of the total or partial refusal of access to the document requested or, in the absence of any reply to the initial application, of the expiry of the period fixed for the reply.

4. The confirmatory application must be formulated in accordance with the formal requirements set out in Article 4.

Article 7.

Processing of confirmatory applications

1. Confirmatory applications shall be handled in the manner prescribed in Article 5, with the exception of the information concerning the right to make a confirmatory application.

2. In the event that the Court of Justice of the European Union refuses, totally or partially, a confirmatory application, it shall inform the applicant of the remedies open to him or her to challenge that refusal, namely instituting court proceedings and/or making a complaint to the European Ombudsman, under the conditions laid down in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

3. Failure to reply to a confirmatory application within the prescribed time limit shall be considered as a negative reply and entitle the applicant to make use of the procedures set out in paragraph 2.

Article 8.

Competent authorities

1. The authority empowered to decide on the reply to be given to an initial application for access to a document shall be the Director General whose service holds the document requested. When that service falls under the direct authority of the President or Registrar of the Court of Justice, the competent authority shall be the Head of Service.

The Director General may delegate his or her powers as regards the initial application to the Director in charge of the service which holds the document requested.

2. When the document requested is held by the Registry of the Court of Justice of the European Union, the Registry of the General Court of the European Union or the Registry of the European Union Civil Service Tribunal, the competent authorities shall be the Deputy Registrar of the Court of Justice, the Deputy Registrar of the General Court and the administrator of the Registry of the Civil Service Tribunal having the most seniority in post respectively.

The Deputy Registrars of the Court of Justice and the General Court may delegate their powers as regards an initial application to an administrator in their Registry.

3. The authority empowered to decide on the reply to be given to a confirmatory application shall be the Registrar of the Court of Justice of the European Union or, where the confirmatory application concerns a document held by the Registry of the General Court of the European Union or the Registry of the European Union Civil Service Tribunal, the Registrar in charge of the Registry holding the document.

4. When a Member State, having received an application for access to a document which it holds and which emanates from the Court of Justice of the European Union in the exercise of its administrative functions, contacts the Court of Justice in order to consult it, the reply to that request for consultation shall be given by the authority who would be empowered pursuant to paragraph 3 to reply to a confirmatory application for access to the same document made directly to the Court of Justice of the European Union.

Article 9.

Third party documents

1. The Court of Justice of the European Union shall not grant access to third party documents in its possession until it has received the consent of the third party concerned.

2. For the purposes of the present article, 'third party' shall mean any natural or legal person or body external to the Court of Justice of the European Union, including the Member States, the other institutions, bodies, offices and agencies of the European Union and non-member States.

3. When the Court of Justice of the European Union receives an application for access to a third party document, the competent authority shall consult the third party concerned in order to ascertain whether the third party opposes release of that document, unless it decides of its own motion to refuse to release the document on the basis of one of the exceptions set out in Article 3.

Article 10.

Means of access

1. Documents shall be supplied in an existing version and format. The Court of Justice of the European Union shall not be required, by virtue of the present decision, to create a new document or gather information at the request of the applicant.

The copy supplied may be a paper copy or an electronic copy, having full regard to the applicant's preference in that respect.

If documents are voluminous or difficult to handle, the applicant may be invited to consult the documents on the spot.

2. If a document has already been released by the Court of Justice of the European Union or by another institution concerned and is easily accessible, the Court of Justice may merely inform the applicant how to obtain it.

Article 11.

Charge for access

1. A fee for producing and sending copies may be charged to the applicant.

2. Consultation on the spot and copies of less than 20 A4 pages shall as a general rule be free of charge.

3. The fee for producing and sending copies shall be calculated on the basis of a tariff fixed by decision of the Registrar of the Court of Justice. This fee shall not exceed the real cost of producing and sending the copies.

4. Published documents shall continue to be subject to their own pricing system.

Article 12.

Reproduction of documents

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

2. Documents covered by copyright of which the Court of Justice of the European Union is the holder and which are released by virtue of this decision may not be reproduced or exploited for commercial purposes without the prior written authorisation of the Court of Justice of the European Union.

Article 13.

Application measures

The Registrar of the Court of Justice shall adopt the measures necessary for the application of this decision. Those measures shall be published on the Internet site of the Court of Justice of the European Union.

Article 14.

Entry into force

This decision shall enter into force on the day following that of its publication in the *Official Journal of the European Union*.

Done at Luxembourg, 11 December 2012.

Registrar

A. CALOT ESCOBAR

President

V. SKOURIS