



DECISION OF THE MANAGEMENT BOARD

Access to documents

The Management Board

Having regard to Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC¹ (the “Regulation” and “ESMA”), in particular Article 72 thereof

Whereas:

- (1) It is necessary to adopt practical measures for implementing Regulation (EC) No 1049/2001 regarding public access to documents as applied by Article 72 of the Regulation.
- (2) Due account should be taken of the need to protect the commercial interests of financial market participants, information about whom is held by ESMA, in accordance with the obligation of professional secrecy in Article 70 of the Regulation, as well as of the public interest in disclosure of information regarding financial supervision.

Has adopted this decision:

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¹ OJ L 331, 15.12.2010, p. 84.



Article 1 – Applicability and scope

- (1) This decision prescribes the arrangements under which the public shall be granted access to documents held by ESMA.
- (2) Citizens of the European Union and natural or legal persons residing or having their registered office in a Member State shall exercise their right of access to ESMA documents pursuant to Article 2(1) of Regulation (EC) No 1049/2001 on public access to documents (the “Access Regulation”).
- (3) ESMA may, subject to the principles, conditions and limits defined in the Access Regulation, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.

Article 2 – Applications for access to ESMA documents

- (1) Applications for access to a document shall be sent to ESMA via ESMA's website, by electronic mail, by post or by fax. The relevant contact details shall be defined by the Executive Director and may be updated periodically. Applications shall be made in one of the official languages of the Union.
- (2) ESMA shall respond to initial and confirmatory applications within fifteen working days from the date of registration of the application.
- (3) 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 any such extension must be notified to the applicant prior to expiry of the original deadline.
- (4) If an application is imprecise, ESMA shall invite the applicant to provide additional information to clarify the application. The deadline for ESMA to respond to the application shall be fifteen working days from receiving the information necessary to identify the document in question.
- (5) Any decision to deny access to a document or part of a document shall state the reason for the refusal based on one of the exceptions listed in Article 4 of the Access Regulation (the “access exceptions”), subject to the requirement not to harm the interests protected by the access exceptions in accordance with Article 9(4). The applicant shall be informed of the remedies available to him or her.
- (6) Pursuant to article 17(1) of the Access Regulation, a report shall be annexed to ESMA's annual report including:
 - (a) the number of cases in which ESMA refused to grant access to documents;
 - (b) the reasons for such refusals; and
 - (c) the number of sensitive documents not recorded in the register.



Article 3 – Processing of initial applications

- (1) Where the document requested is directly accessible as defined in Article 12 of the Access Regulation and Article 8 of this decision, the applicant shall be notified together with details of how to retrieve the document in question.
- (2) Applications relating to documents which are not directly accessible shall be acknowledged by ESMA pending an answer unless this answer can be sent by return post.
- (3) The acknowledgement of receipt and the answer shall be sent in writing, where appropriate, by electronic means.
- (4) ESMA's document access co-ordinator shall decide initial applications and shall inform the applicant of his/her decision. The document access co-ordinator shall be assisted in this task, if necessary, by the ESMA service which produced or received the document in question.
- (5) In the event of a total or partial refusal, the applicant may, within 15 working days of receiving ESMA's reply, make a confirmatory application asking ESMA to reconsider its position and shall be informed of this right when informed of the document access co-ordinator's decision.
- (6) Failure by ESMA to reply within the prescribed time limit shall entitle the applicant to make a confirmatory application.

Article 4 – Processing of confirmatory applications

- (1) The Executive Director is authorised to take decisions regarding confirmatory applications. The Executive Director shall be assisted in this task by the document access co-ordinator and, if necessary, the ESMA service which produced or received the document in question.
- (2) The decision shall be notified to the applicant in writing, where appropriate by electronic means, and shall inform him or her of the right to bring a complaint to the Ombudsman or to appeal to the Board of Appeal.

Article 5 – Third-party documents

- (1) Where ESMA receives an application for access to a document which it holds but which originates from a third party, ESMA shall check whether one of the access exceptions applies.
- (2) If, after that examination, ESMA considers that access must be refused under one of the access exceptions, the negative answer shall be sent to the applicant without consultation of the third-party author.
- (3) ESMA shall grant the application without consulting the third-party author where the document requested has already been disclosed either by its author or under the Access Regulation or similar provisions.
- (4) Unless the document originates from a Member State, ESMA 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 the Access Regulation.



- (5) In all other cases, the third-party author shall be consulted. In particular, if an application for access concerns a document originating from a Member State, ESMA shall consult the originating authority.
- (6) The third party consulted shall be given a deadline for reply which shall allow ESMA to respect its own deadline to reply to the applicant. In the absence of an answer within the prescribed period, or in those cases where the third party is untraceable or unidentifiable, ESMA shall reach a decision in accordance with the criteria set out in Article 4 of the Access Regulation, taking into account the legitimate interests of the third party on the basis of the information at ESMA's disposal.
- (7) Where an initial application for access concerns a document originating from a Member State and the proposed decision of the document access co-ordinator would conflict with the view of the originating authority, the document access co-ordinator shall seek the view of the Executive Director. The Executive Director shall, if necessary, consult the originating authority again.

Article 6 – Exercise of the right of access

- (1) Documents shall be sent by mail or electronic means, with full regard to the applicant's preference. If documents are voluminous or difficult to handle, the applicant may be invited to consult the documents at ESMA's premises. This consultation shall be free of charge.
- (2) If the document has been published, the answer shall consist of the publication references or, for documents available on ESMA's website or other websites, the appropriate Uniform Resource Locator (URL).
- (3) If the documents requested exceed twenty pages and access is provided other than by direct access in electronic form or consultation at ESMA's premises, the applicant may be charged a fee not exceeding the real cost of producing and sending the copies. Standard fees are set out in Annex 1 and may be amended by the Executive Director as necessary to reflect changes in costs.

Article 7 – Measures facilitating access to documents

- (1) In order to make the right of access provided for in the Access Regulation effective, ESMA shall provide access to a register of documents. The register shall be accessible in electronic form.
- (2) The register of documents shall cover the categories of ESMA documents listed in Annex 2, subject to the restrictions in the Access Regulation, in particular Articles 9(2), 9(3) and 11(2). The Executive Director may add categories to Annex 2 as appropriate.
- (3) The register shall contain:
 - the title of the document (in the languages in which it is available and indicating its subject-matter or contents);
 - its reference number;
 - an indication of the author (ESMA or third party);
 - the date on which it was received or drawn up; and



- the date of entry in the register.
- (4) For documents or series of documents which are directly accessible the register shall include a hyperlink to the document or the series of documents in question.
- (5) For documents which are not directly accessible, the register shall provide details of how to request access.

Article 8 – Documents directly accessible to the public

- (1) The documents listed in Annex 2 shall, as far as possible and subject to the access exceptions, be made directly accessible to the public by electronic means.

Article 9 – Internal organisation

- (1) The Executive Director shall ensure coordination and uniform implementation of these rules by ESMA staff. To this end, the Executive Director shall provide all the necessary advice and guidelines.
- (2) The Executive Director shall designate a suitably-qualified person responsible for assessing initial applications for documents (the “document access coordinator”) and for preparing decisions by the Executive Director with respect to confirmatory applications.

Article 10 – Final provisions

- (1) This decision enters into force on 31 May 2011.
- (2) The European Ombudsman shall be informed of this decision and any subsequent revisions.

Done at Paris on 24 May 2011

Steven Maijoor
Chair
For the Management Board



ANNEX 1 – STANDARD FEES

Paper copies of 20 pages or more: EUR 0.10 per page plus carriage costs



ANNEX 2 – DOCUMENT REGISTER CATEGORIES

1. The following documents adopted by the Board of Supervisors or Management Board:
 - Summaries of conclusions of meetings
 - Budget
 - Work programme
 - Other decisions
2. Staff vacancies
3. Draft technical standards submitted to the Commission under Articles 10 and 15 of the Regulation
4. Guidelines and recommendations issued under Article 16 of the Regulation to the extent these do not concern individual financial market participants
5. Consultation process documents, in particular: calls for evidence, discussion papers, consultation papers, final reports, feedback statements and non-confidential responses
6. Decisions on breach of Union law, action in emergency situations and settlement of disagreements between competent authorities in cross-border situations taken pursuant to Articles 17 to 19 of the Regulation under the conditions set out in Article 39 of the Regulation
7. Delegation agreements referred to in Article 28 of the Regulation
8. Best practices, and other results of peer reviews adopted for publication, in accordance with Article 30(4) of the Regulation
9. Opinions issued by ESMA as provided for in Article 34 of the Regulation
10. Opinions and advice of the Securities and Markets Stakeholder Group and the results of consultations as referred to in Article 37 of the Regulation
11. Decisions of the Board of Appeal in accordance with Article 60(7) of the Regulation
12. All press releases or publications made by ESMA
13. A calendar showing the meetings of the Board of Supervisors, Management Board and Securities and Markets Stakeholder Group.
14. The agendas and conclusions of meetings of the Chairperson and Executive Director with financial services industry representatives concerning draft regulatory or implementing technical standards.
15. Memoranda of understanding entered into by ESMA
16. Documents originating from third parties which have already been disclosed by their author or with the author's consent



17. Documents already disclosed following a previous application
18. Other documents required to be published or which are adopted for publication