



Council of the
European Union

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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	DECISION BY THE EUROPEAN PEACE FACILITY COMMITTEE of 13 July 2022 on the rules for public access to documents held by the European Peace Facility

Delegates will find attached the European Peace Facility Rules on Public Access to Documents held by the Facility, as approved by the EPF Committee on 13 July 2022.



Council of the European Union

European Peace Facility
The administrator for operations

European Commission



European Peace Facility
The administrator for assistance measures

**DECISION BY THE EUROPEAN PEACE FACILITY COMMITTEE
of 13 July 2022
on the rules for public access to documents held by the European Peace Facility**

THE EUROPEAN PEACE FACILITY COMMITTEE,

Having regard to Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility, in particular Article 71 thereof,

Having regard to the proposal by the High Representative of the Union for Foreign Affairs and Security Policy,

Whereas it is necessary to define rules with a view to handling applications for access to documents held by the European Peace Facility ('the Facility'),

HAS ADOPTED THIS DECISION:

Article 1

The rules for public access to documents held by the Facility, as set out in the Annex, are hereby adopted.

Article 2

The Decision shall enter into force on 1 October 2022.

Done at Brussels, 13 July 2022

The Chair of the EPF Committee

The administrator for assistance measures

Tomáš TRNKA

Peter M. WAGNER

The administrator for operations

Uwe HARMS

ANNEX

European Peace Facility

Rules on public access to documents held by the Facility

With a view to handling applications for access to documents held by the European Peace Facility ('the Facility'), the following rules shall apply.

Article 1

Scope

These rules are established pursuant to Article 71 of Council Decision (CFSP) 2021/509 establishing a European Peace Facility. They shall apply to all applications for access to documents held by the Facility by any citizen of the European Union and any natural or legal person residing or having its registered office in a Member State. These rules are consistent with Regulation (EC) N° 1049/2001 of the European Parliament and of the Council ('the Regulation'), including the principles, conditions and limits laid down in that Regulation.

Article 2

Definitions

For the purposes of these rules:

- a) 'document' means any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audio-visual recording) concerning a matter relating to the policies, activities and decisions falling within the Facility's sphere of responsibility.
- b) 'third party' means any natural or legal person, or entity outside the Facility, including Member States, other Union or non-Union institutions and bodies and third countries.

Article 3

Applications

1. Applications for access to documents held by the Facility shall be processed by the administrators in accordance with Article 6 of the Regulation.
2. Applications shall be submitted in writing to either of the two administrators as legal representatives of the Facility as provided for in Article 12(5) of Council Decision (CFSP) 2021/509.
3. The administrators shall inform the public about their respective areas of responsibility (i.e. either operations or assistance measures) in accordance with the provisions of Council Decision (CFSP)

2021/509, and the means and contact details for requesting public access to documents pertaining to their respective areas of responsibility.

4. The application shall be handled by the administrator who receives the request pursuant to Article 7 of the Regulation.

Article 4

Exceptions

The administrator examining the application shall determine, in accordance with Article 4 of the Regulation, whether any of the exceptions under that provision applies.

Article 5

Processing of initial applications – time-limits

1. The administrator responsible for the handling of an initial application shall reply to the applicant within 15 working days of the date of registration of the application.
2. If an application is not sufficiently precise, as referred to in Article 6(2) of the Regulation, the administrator shall ask the applicant to clarify the application and shall assist the applicant in doing so. The time-limit to reply shall run from the time when this clarification is made available.
3. In exceptional cases, as referred to in Article 7(3) of the Regulation, the time-limit to reply may be extended by 15 working days, in particular:
 - a) in the case of a complex request or a request concerning a large number of documents;
 - b) if the request requires consultation of the European Peace Facility Committee (hereinafter, "the Committee") or third parties,

The applicant shall be informed of any such extension and of the reasons for it.

Article 6

Decision on the applications to access to documents

1. If one of the administrators receives a request related to a document pertaining to both of the administrators' areas of responsibility (i.e. both operations and assistance measures) or to a topic pertaining to the responsibilities of the other administrator, the administrator who received the request shall consult the other administrator without delay. The administrator consulted shall reply within 5 working days.

2. When consulted in accordance with the previous paragraph, the administrator shall in particular check and indicate to the other administrator if he or she has received a similar or identical request for access from the same applicant.
3. If the administrator who was consulted indicates that he or she has received a similar or identical request for access from the same applicant, the administrator who first received the application shall handle it. The administrator who received the application last shall indicate to the applicant that the other administrator will process his or her request. The administrator handling the application for access to the document shall inform the other administrator of the reply given to the applicant.
4. By way of exception to Article 3(4), in cases where an application concerns one or more documents pertaining to the area of responsibility of the other administrator, and the administrator who received the application does not hold part or all of them, the application shall be handled by the administrator who holds the requested document(s) in part or in full. The administrator who received the request shall inform the applicant that his or her application will be processed by the other administrator, either in part or in full. In such case, the time-limit to reply to the applicant shall run from the date of receipt by the administrator who is to handle the request in part or in full.
5. The administrators shall answer after consulting third parties concerned, for example the Council of the European Union, the European External Action Service, the European Commission or the Member States, when the application concerns documents of third parties held by the Facility. A Member State may request the administrator concerned not to disclose a document originating from that Member State without its prior agreement.
6. In the event of a total or partial refusal, the applicant shall be informed by the administrator concerned that the applicant may make a confirmatory application within 15 working days, requesting the Facility to reconsider its position.

Article 7

Granting access or refusal following an initial application

In cases where examination of the application for access to a document leads to the conclusion that:

- a) no exception applies, the document shall be released to the applicant by the administrator.
- b) one or more of the exceptions apply, access to the document shall be fully or partially refused by the administrator. Detailed reasons shall be given for any refusal, explaining:

- i) why the Facility considers that the document in question or parts of it fall under the exceptions, and;
- ii) why the Facility considers that releasing the document would undermine the interests protected under Article 4 of the Regulation.

Article 8

Partial access following an application

If the grounds for refusal concern only certain specific parts of the document requested, the possibility of granting partial access must be considered. In such case, the parts to be protected are redacted and access is granted to the other parts of the document.

Article 9

Processing of confirmatory applications

1. Confirmatory applications shall be handled within 15 working days from their registration. In exceptional cases, when the request concerns a complex request or a very large number of documents, this time-limit may be extended by 15 working days, provided that the applicant is notified of this extension in advance and detailed reasons are given.
2. The confirmatory application shall be forwarded to the administrator who prepared the reply to the initial application. He or she shall also prepare a draft response to the confirmatory applicant after consulting with the other administrator where applicable, on the basis of these rules, as well as with Member States or other third parties where the documents concerned originate from them. A Member State may request that a document originating from it is not disclosed without its prior agreement.
3. Any response to the confirmatory application shall be decided upon by the Committee.
4. Decisions by the Committee refusing, fully or partially, access to a document shall be based on the exceptions laid down in Article 4 of the Regulation.
5. The administrator who prepared the draft response to the confirmatory application shall send the response to the applicant on behalf of the Facility.
6. In the event of a full or partial refusal at the confirmatory stage, the administrator concerned shall inform the applicant about the available remedies, namely the possibility of instituting Court proceedings against the Facility and/or making a complaint to the Ombudsman, under the conditions laid down in Articles 263 and 228 of the TFEU, respectively.

Article 10

Treatment of sensitive documents

1. Sensitive documents are documents originating from the Facility or from third parties classified as 'TRÈS SECRET UE /EU TOP SECRET', 'SECRET', 'CONFIDENTIEL' or 'RESTREINT UE/EU RESTRICTED' or equivalent classification in accordance with the rules of the entity concerned, which protect essential interests of the European Union or of one or more of its Member States in the areas covered by Article 4(1)(a) of the Regulation, notably public security, defence and military matters.
2. Where an application concerns a sensitive document, it shall be handled in accordance with Article 9 of the Regulation.
3. A decision to refuse access to the requested document, or part of it, shall state the reasons in a manner consistent with the interests protected in Article 4 of the Regulation. The administrator handling the application shall ensure that the document or the part of it for which full or partial access is granted, is fully or partially declassified before the released text is sent to the applicant.

Article 11

Register

In order to provide public access to the documents of the Facility, each administrator shall provide access to a register of documents pertaining to his or her respective responsibilities in accordance with Article 11 of the Regulation. This register shall contain a reference number and the subject-matter of the document and the date on which it was received or drawn up by the Facility and recorded in the register.

Article 12

Report

Each administrator shall publish annually on behalf of the Facility a report for the preceding year including the number of cases in which it refused to grant access to documents, the reasons for such refusals and the number of sensitive documents not recorded in the register of each administrator.

Article 13

Assistance to the Facility by the Council and the Commission

Pursuant to Article 10(2) and (3) of Council Decision (CFSP) 2021/509, the Facility may request administrative assistance from the Secretary-General of the Council and the Commission for the purpose of dealing with applications under these rules.

 Electronically signed on 27/07/2022 19:08 (UTC+02) in accordance with Article 11 of Commission Decision (EU) 2021/2121