

THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY

DECISION OF THE GOVERNING BOARD OF THE EUROPEAN JOINT UNDERTAKING FOR ITER AND THE DEVELOPMENT OF FUSION ENERGY CONCERNING THE TRANSPARENCY AND PUBLIC ACCESS TO THE DOCUMENTS OF THE JOINT UNDERTAKING

HAVING REGARD to the Statutes annexed to the Council Decision (Euratom) No 198/2007 of 27 March 2007 establishing the European Joint Undertaking for ITER and the Development of Fusion Energy (hereinafter "the Joint Undertaking") and conferring advantages upon it¹ (hereinafter "the Statutes"),

HAVING REGARD to Regulation (Euratom) No 3 of 31 July 1958 implementing Article 24 of the Treaty establishing the European Atomic Energy Community²;

HAVING REGARD to Commission Decision (EC,ECSC,Euratom) No. 2001/844 of 29 November 2001 amending its internal Rules of Procedure³ setting out provisions on security including classification of documents,

Whereas in order to ensure that the Joint Undertaking operates in accordance with the principles of transparency, accountability and openness, the principles laid down in the 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 (hereinafter referred to as "Regulation 1049/2001") should apply to the Joint Undertaking under the arrangements to be set out by the Governing Board of the Joint Undertaking.

THE GOVERNING BOARD OF THE JOINT UNDERTAKING HAS ADOPTED THIS DECISION:

Article 1

Applicability

The principles laid down in the Regulation 1049/2001 shall apply to the Joint Undertaking in accordance with the implementing arrangements provided for in this Decision.

¹ O.J. L 90, 30.03.2007, p. 58.

² O.J. L 17/58, 6.10.1958, p. 406/58

³ O.J. L317, 3.12.2001, p.1

Article 2

Beneficiaries

1. Citizens of the European Union and natural or legal persons residing or having their registered office in a Member State of the European Union shall have the right of access to documents of the Joint Undertaking pursuant to Article 2(1) of Regulation 1049/2001.
2. Citizens of a third country that is a Member of the Joint Undertaking and natural or legal persons having their registered office in a third country that is a Member of the Joint Undertaking shall enjoy the right of access to documents of the Joint Undertaking on the same terms as the beneficiaries referred to in paragraph 1 unless stated otherwise in 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 the Joint Undertaking's sphere of responsibility;
2. "Third party" shall mean any natural or legal person, or any entity outside the Joint Undertaking, including the Members, Community or non-Community institutions and bodies and third countries.

Article 4

Exceptions

1. The Joint Undertaking 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. The Joint Undertaking 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,
- (d) the financial interests or international relations of the Joint Undertaking,

unless there is an overriding public interest in disclosure.

3. Access to a document, produced or received and in possession of the Joint Undertaking, which relates to a matter where a decision has not been taken, 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 the Joint Undertaking shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the Joint Undertaking's decision-making process, unless there is an overriding public interest in disclosure.

Article 5

Classification of documents

1. Without prejudice to classification laid down in Regulation (Euratom) No. 3 of 31 July 1958 implementing Article 24 of the Euratom Treaty⁴, the Joint Undertaking's documents shall be classified in accordance with the classification laid down in Commission Decision (EC, ECSC, Euratom) No. 2001/844 of 29 November 2001 amending its internal Rules of Procedure⁵.
2. The classification of a document of the Joint Undertaking shall be decided by the Director. When the classification raises questions of principle, and/or when the document related to the work of the Governing Board, Executive Committee or Scientific Programme Board(s), the Director may consult the relevant Chair before taking his decision.
3. Applications for access to classified documents shall be handled by the Director, as appropriate in consultation with the relevant Chair of the bodies referred to in paragraph 2.
4. If access to a classified document is to be given, it shall be first declassified by a decision of the Director.

⁴ O.J. L 17/58, 6.10.1958, p. 406/58

⁵ O.J. L317, 3.12.2001, p.1

Article 6

Applications

1. Applications for access to the Joint Undertaking's documents, which are not publicly available, shall be made in writing including electronic form and in a sufficiently precise manner to enable the Joint Undertaking to identify the document(s). The relevant addresses to which the application shall be sent are annexed to this Decision and shall be regularly updated by the Director.
2. If an application is not sufficiently precise or in a language other than English, the Joint Undertaking may ask the applicant to clarify his request and shall assist, as necessary, the applicant in doing so, for example by providing information on the use of public registers of documents. The deadline referred to in Article 7 for processing the application for access to documents shall start from receiving the information necessary to identify the documents in question.
3. In the event of an application relating to a very long document or to a very large number of documents, the Joint Undertaking may confer with the applicant informally, with a view to finding a fair solution.

Article 7

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 unless the answer can be sent by return post.
2. Where the document requested is directly accessible as defined in Article 11, the applicant, in accordance with Article 10(2), shall be notified as such together with details of how to retrieve the document in question.
3. Within 15 working days from date of the registration of the application, the Joint Undertaking 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 ask the Joint Undertaking to reconsider its position in accordance with paragraph 4 of this Article.
4. In the event of a total or partial refusal, the applicant may, within 15 working days of receiving the Joint Undertaking's reply, ask the Joint Undertaking to reconsider its position by submitting a confirmatory application.
5. 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, as regards third parties documents, the time-limit provided for in paragraph 3 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.

6. Failure by the Joint Undertaking to reply within the prescribed time limit shall entitle the applicant to a confirmatory application.

Article 8

Processing of confirmatory applications

1. The Director of the Joint Undertaking shall take the decisions relating to requests to the Joint Undertaking to reconsider its position. Such requests shall be handled promptly. Within 15 working days from receipt of such a request, the Joint Undertaking shall either grant access to the document concerned 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. In the event of a total or partial refusal, the Joint Undertaking shall inform the applicant of the remedies open to him or her, namely to lodge a complaint to the European Ombudsman provided that the applicant is residing or having registered office in the Member State of the European Union or/and institute court proceedings against the Joint Undertaking, under the conditions laid down in Articles 107(d) or 146 of the Euratom 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 may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.
3. Failure by the Joint Undertaking to reply within the prescribed time limit shall be considered as a negative reply and entitles the applicant to lodge a complaint to the European Ombudsman provided that the applicant is residing or having registered office in the Member State of the European union or/and institute court proceedings against the Joint Undertaking, under Article 195 or 230 of the EC Treaty, respectively.

Article 9

Documents from third parties

1. Where the Joint Undertaking receives an application for access to a document, which it holds, but which originates from a third party, the Joint Undertaking shall consult the third party with a view to assessing whether an exception referred to in Article 4 is applicable unless it is clear that the document shall, or shall not, be disclosed.
2. The third-party consulted shall have a deadline for reply which should enable the Joint Undertaking 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, the Joint Undertaking shall decide in accordance with the

provisions referred to in Article 4 and taking into account the legitimate interests of the third party, whether the document shall, or shall not, be disclosed .

3. A Member may request the Joint Undertaking not to disclose a document originating from that Member without its prior agreement.
4. If, after that examination, the Joint Undertaking considers that access to it shall be refused under one of the exceptions provided for in Article 4, the negative answer shall be sent to the applicant without consultation of the third-party author.
5. If only parts of the requested document are covered by any exceptions, the remaining parts of the document shall be released.
6. Without prejudice to paragraph 3, if the Joint Undertaking intends to give access to a document against the explicit wishes of the third party, it shall inform the third party 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 10

Access following an application

1. Applicants shall have access to documents either by receiving a copy, in paper or electronic format, or by consulting specific documents on the Joint Undertaking's premises. Copies of less than 20 pages or direct access in electronic form or through the register shall be free of charge. As regards copies of more than 20 pages, the charge shall not exceed the real cost of producing and sending the copies.
2. If a document has already been released by the Joint Undertaking and is easily accessible to the applicant, the Joint Undertaking may fulfill its obligation of granting access to documents by informing the applicant how to obtain the requested document.
3. All documents are subject to the Joint Undertaking's copyright policy available on the Joint Undertaking's website.

Article 11

Register of documents

1. To make citizen's rights under this Decision effective, the Joint Undertaking shall provide public access to an electronic register of documents of the Joint Undertaking in particular through its website. References to documents shall be recorded in the register without delay.

2. The register shall contain the title of the document, an identifier, 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.
3. Subject to Article 4, the Joint Undertaking shall make directly accessible to the public through the register of documents the following documents:
 - Agenda, summary of decisions and decisions of the Governing Board;
 - Recruitment and vacancies;
 - Organisational chart and staff contact details;
 - Any documents published in the Official Journal.
4. The Director may add, when necessary after consultation of the Chair of the Governing Board, other documents to the list set out in paragraph 3.

Article 12

Report

The Joint Undertaking, upon proposal from the Director, shall publish annually, as part of the annual report, information concerning the implementation of this Decision, in particular statistics on the number of requests for access to Joint Undertaking documents, the number of cases in which the Joint Undertaking refused to grant access to documents, and the reasons for such refusals.

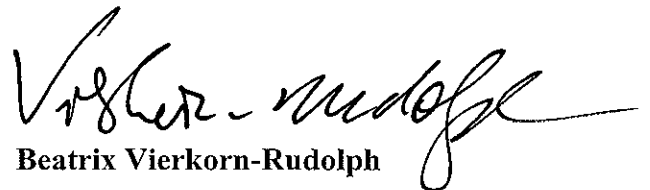
Article 13

Entry into force

This Decision shall enter into force three months after the Director has taken his/her function.

Done at Barcelona, 17 July 2007

For the Governing Board

A handwritten signature in black ink, appearing to read 'Vierkorn-Rudolph', written in a cursive style.

Beatrix Vierkorn-Rudolph

Chair of the Governing Board

ANNEX

SUBMISSION OF APPLICATIONS FOR ACCESS TO DOCUMENTS

Addresses for submission of applications for access to documents held by the Joint Undertaking:

1. By post:

The European Joint Undertaking for ITER and the Development of Fusion Energy
Access to Documents
TDL-B3
C/ Josep Pla, n° 2
08019 Barcelona
Spain

2. By electronic mail:

rtd-fusion-for-energy@ec.europa.eu

3. Via the Joint Undertaking's website:

<http://fusionforenergy.europa.eu>

4. By fax:

+34 93 320 1851