

DECISION No 19/2019

**OF THE ADMINISTRATIVE BOARD OF THE EUROPEAN UNION AGENCY
FOR THE COOPERATION OF ENERGY REGULATORS**

of 11 December 2019

**on the Rules of Procedure of the European Union Agency for the Cooperation of
Energy Regulators**

THE ADMINISTRATIVE BOARD OF THE EUROPEAN UNION AGENCY FOR THE
COOPERATION OF ENERGY REGULATORS,

Having regard to Regulation (EU) No 2019/942 of the European Parliament and of the
Council of 5 June 2019 establishing a European Union Agency for the Cooperation of
Energy Regulators¹, and in particular, Articles 14(5) and 19(1)(t) thereof,

Having regard to the proposal of the Director of 26 November 2019,

Having regard to the favorable opinion of the Board of Regulators of 11 December 2019,

Whereas:

- (1) Article 41 of the Charter of Fundamental Rights of the European Union lays down a right to good administration. According to this right, every person is entitled to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions and bodies of the Union. This includes the right of every person to be heard, before any individual measure which would adversely affect him or her is taken, the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy, and the obligation of the administration to give reasons for its decisions.
- (2) Article 14(5), (6), (7) and (8) of Regulation (EU) 2019/942 requires ACER to adopt and publish adequate and proportionate rules of procedure which shall include provisions to ensure a transparent and reasonable decision-making process guaranteeing fundamental procedural rights based on the rule of law, including the right of the party concerned to be heard, to be informed of ACER's intention to adopt a decision, to be given the opportunity to express its views on the matter, to access their own file, to be given the reasons for the decision and to be informed of the legal remedies available under Regulation (EU) 2019/942.
- (3) Recital 35 of Regulation (EU) 2019/942 provides that ACER should exercise its decision-making powers in line with the principles of fair, transparent and reasonable decision-making.

¹ OJ L 158, 14.06.2019.

- (4) Due to the commercially sensitive information of the data which the Agency receives and processes according to Regulation (EU) No 1227/2011, Article 17 of this Regulation imposes strict confidentiality obligations on the Agency. In order to ensure its compliance, the individual decisions on matters related to wholesale market integrity and transparency can therefore not be subject to any public notice, public consultation or publication obligation. For individual decisions on matters related to wholesale market integrity and transparency regarding the registration of reporting parties, the already existing rules of procedure established by ACER on the basis of Commission Implementing Regulation (EU) No 1348/2014, in particular Article 11(1) thereof, apply.
- (5) The Administrative Board of ACER adopted rules of procedures with respect to the functioning of the Agency's working groups.
- (6) The Board of Regulators of ACER adopted rules of procedures with respect to its functioning.
- (7) Rules of procedures might also cover aspects related to the internal functioning of ACER. It might be appropriate further to develop these rules once experience on the implementation of Regulation (EU) 2019/942 has been gained. Therefore, the Director is invited to submit to the Administrative Board, by 30 April 2020, a proposal for amendment of the Rules of Procedure as adopted by this Decision which, on the basis of the experience gained until then, requires further formalisation,

HAS ADOPTED THIS DECISION:

Article 1

The Rules of Procedure of the European Union Agency for the Cooperation of Energy Regulators, as included in Annex I, are hereby adopted.

Article 2

This Decision shall enter into force on the day of its adoption and shall be notified to the Director and the Board of Regulators.

Done at Ljubljana, 11 December 2019.

For the Administrative Board

The Chair

Dr. R. JORDAN

ANNEX I

**RULES OF PROCEDURE
OF THE EUROPEAN UNION AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS**

TITLE I

GENERAL PROVISIONS

Article 1

Scope of application

1. These Rules lay down the administrative procedure by which ACER adopts individual decisions, referred to in Article 2(d) of Regulation (EU) 2019/942, and opinions and recommendations, referred to in Article 2(a) to (c) of the same Regulation, with the exception of individual decisions on matters related to wholesale market integrity and transparency regarding the registration of reporting parties for which the already existing rules of procedure established by ACER on the basis of Commission Implementing Regulation (EU) No 1348/2014, in particular Article 11(1) thereof, apply.
2. The Rules do not lay down procedures for the functioning of ACER's working groups or of the Board of Regulators, or for the interactions within ACER's administrative and management structure, referred to in Article 17 of Regulation (EU) 2019/942, unless such interactions have a direct impact on the rights and obligations of external parties.

Article 2

Definitions

1. "Parties concerned" means natural or legal persons, including the regulatory authorities, who are the addressees of the intended decision or who are directly and individually concerned by that decision.
2. "Confidential information" means business secrets and other confidential information, i.e. information other than business secrets, insofar as its disclosure would significantly harm a person or undertaking.
3. "Internal documents" means drafts, memos, notes, communications and other preparatory documents prepared by or exchanged between ACER staff members, the Director, ACER's working groups and task forces, the Board of Regulators, ACER's external contractors, the European Union institutions and bodies, or other public authorities concerned, unless they have been made public by the Agency.

Article 3

Time limits

1. Time limits prescribed under these Rules shall be calculated in accordance with Regulation (EEC, Euratom) No 1182/71 of the Council¹, whereby ‘public holidays’ designated in ACER shall mean those days that ACER published as its official holidays on its website.
2. Time limits prescribed under these Rules may be extended upon request of a party concerned. Any request for the extension of a time limit shall be submitted to ACER in writing before the expiry of the time limit and shall be justified.

Article 4

Representation

Where a party has appointed a representative, that representative shall provide evidence of due authorisation to act on behalf of the represented party.

¹ Regulation (EEC, Euratom) No 1182/1971 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p.1).

TITLE II

DECISIONS

SECTION I INITIATION OF PROCEDURE

Article 5

Notification of the initiation of the procedure

1. A procedure shall be initiated *ex officio* or on request of a party concerned.
2. ACER shall notify the parties concerned about the initiation of the procedure because of its intention to adopt a decision.
3. The notification shall be in writing and indicate at least:
 - a) the reference number,
 - b) the grounds for the initiation of the procedure,
 - c) the time limit within which the decision should be adopted,
 - d) the member of ACER staff who manages the procedure and is the contact point for the parties,
 - e) a functional email inbox,
 - f) a reference to these Rules.
4. If ACER identifies an additional party concerned during a decision-making procedure, it shall notify that party concerned in line with paragraph 2 of this Article. Such notification shall be effected without undue delay to enable the party concerned to exercise its rights under Section IV of Title II of these Rules. ACER shall inform the other parties concerned about the additional party.

Article 6

Public notice

1. ACER shall publish on its website a notice informing about the initiation of a procedure to adopt a decision, where appropriate, and may invite interested third parties to submit their observations.
2. The notice shall provide at least:
 - a) the reference number,
 - b) the grounds for the initiation of the procedure,

- c) the time limit within which the decision should be adopted.
3. Where ACER invites interested third parties to submit observations, it shall indicate in the public notice the functional email inbox to which, and the date and time until when, observations may be sent.
4. This Article does not apply to decisions on matters related to wholesale market integrity and transparency.

SECTION II **PROCEDURAL DOCUMENTS**

Article 7

Submissions

1. Submissions to ACER, including of observations, applications or requests, shall only be valid if made in writing, unless ACER has allowed for oral submissions in the course of a meeting or an oral hearing. Such oral submissions shall be recorded in the minutes of the meeting or oral hearing in accordance with Article 12(4).
2. Submissions in writing shall be made preferably in electronic format to the dedicated functional email inbox. If not otherwise notified, the general functional email inbox for submissions indicated on ACER's website shall be used.
3. In its first submission, a party shall expressly indicate the relevant contact point and the email inbox via which ACER may serve documents on that party. If the party does not expressly indicate such a contact point and email inbox, ACER shall use the contact details found in the submission. The party shall inform ACER about any changes of the relevant contact details.
4. The submitting party shall indicate explicitly in its submission whether it claims that the submission contains confidential information. Any such confidentiality claims shall be made in accordance with Article 9. In case a party does not indicate whether or not, in the party's view, the submission contains confidential information, ACER shall set a time limit of no more than five working days for the party to provide such indication and to raise any confidentiality claims in accordance with Article 9. If the party fails to do so, ACER may assume that the submission concerned does not contain confidential information and that the party has no objections to the disclosure of the submission in its entirety.
5. In accordance with Article 9, submissions containing confidentiality claims shall include a non-confidential version.
6. If a submission contains an updated version of a document of a previous submission, the changes shall be clearly marked.

7. ACER shall acknowledge the receipt of submissions, without prejudice to their acceptance and assessment. Such acknowledgement can also be provided by an automatically generated email response.
8. Submissions sent on Saturday, Sunday or on ACER official holidays are considered as received on the next working day.
9. ACER shall reject inadmissible submissions. ACER may also reject or return submissions which are unrelated to the subject matter of the procedure.
10. If ACER identifies a submission as defective, ACER may give the party an appropriate period for remedying the identified defect. If the defect is not remedied within the set period, ACER may reject the defective submission in its entirety or in part.

Article 8

Service of documents

1. ACER may serve any document concerning the procedure on a party in electronic format.
2. The service of documents in electronic format shall be made via the email inbox referred to in Article 7(3) or, subject to prior notification, via other electronic means that ACER considers appropriate.

Article 9

Confidential information

1. Information shall be classified as confidential where the party has made a claim to this effect and ACER has accepted such a claim.
2. Where a party claims that the information is confidential, it shall:
 - a) clearly identify the specific material or part of it which it considers to contain confidential information;
 - b) clearly identify the specific persons or undertakings with regard to which such information is to be considered confidential;
 - c) substantiate each of the confidentiality claims and provide reasons for the exclusion of the class of recipients from having access to the information concerned; and
 - d) provide a separate non-confidential version with the descriptions of the deleted information, enabling any party concerned with access to the file to determine whether:
 - (i) the information deleted is likely to be relevant for its defence; and

- (ii) there are sufficient grounds to request ACER to grant access to the information claimed to be confidential.
3. Standard references to confidentiality, such as generic disclaimers contained in emails, are not accepted as claims of confidentiality.
4. ACER shall assess the confidentiality claim to determine whether the information concerned can be treated as confidential, considering in particular:
 - a) the justification provided;
 - b) the relevance of the information for the decision;
 - c) the probative value of the information for the decision;
 - d) the degree of sensitivity involved, i.e. the extent to which the disclosure of the information would harm the interests of the person or undertaking to whom that information relates.
5. Where ACER agrees with the confidentiality claim, it can accept the confidentiality claim provisionally or without limitation.
6. ACER may reverse a provisional acceptance of the confidentiality claim in whole or in part at any time during the procedure in accordance with the process under paragraph 7 of this Article.
7. Where ACER does not agree with the confidentiality claim in whole or in part and intends to disclose the information concerned in whole or in part, it shall inform the party in writing of its intention to disclose the information, give its reasons and set a time limit within which the party may express its views in writing. If necessary, ACER shall then take a decision on the treatment of the confidentiality claim, taking into consideration in particular the criteria according to paragraph 4 of this Article.
8. If the party claiming confidentiality does not comply with the requirements of paragraph 2 of this Article, in particular does not provide a non-confidential version of its submission, ACER shall set a time limit of no more than five working days to remedy the incompliance with paragraph 2. If the party fails to do so, ACER may assume that the submission concerned does not contain confidential information and that the party has no objections to the disclosure of the submission in its entirety.

SECTION III **INVESTIGATION AND ASSESSMENT**

Article 10

Request for information

1. ACER may request from the parties concerned or from third parties all information necessary for the adoption of the decision.

2. The request for information shall be in writing and shall specify the purpose of the request, indicate the legal basis under which the information is requested and set a proportionate time limit within which the information is to be provided, taking account of the urgency, complexity and potential consequences of the matter.
3. ACER may request information by a simple request or, where provided for by law, by a decision. The simple request for information shall indicate that in case of the party's failure to comply with the request and to provide an adequate justification for not complying with the request, ACER may require the information by a decision. ACER may require information by a decision also without a prior simple request for information, where appropriate.
4. The requested party shall remain fully responsible if the information supplied is incomplete, incorrect or misleading.

Article 11

Experts

1. ACER may seek the opinion of experts and request expert reports.
2. The experts shall be free of conflict of interest. In particular, they shall not have been involved for any of the parties in previous procedures on the same matter.
3. Before commissioning the expert, ACER shall inform the parties concerned, so that they can provide their comments within a set time limit. After that time limit, ACER shall commission the expert.
4. The expert shall be reimbursed according to Director Decision 2012-35 on the Rules for Reimbursement of Experts.

Article 12

Meetings

1. ACER may organise meetings with the parties concerned or with third parties to gather information and views and/or to discuss any relevant aspect of the procedure at any point in time.
2. Meetings may be bilateral or involve multiple parties. They may be held in person, via telephone, via video conference or via any other suitable means. They may be subject to the procedural safeguards that ACER deems appropriate for their integrity, such as verifying the identity of the participants. Meetings held in person shall take place in Ljubljana, unless, following the proposal of ACER, all the parties agree to another location.
3. The meeting shall take place at least 5 working days after ACER has informed the invited participants, unless they agree to meet earlier.
4. ACER may take minutes of meetings. Minutes shall at least contain the date, time and place of the meeting, the attendees and a summary of the meeting. Where ACER intends to take minutes, it shall inform the participants in the meeting. ACER

shall share a draft of the minutes with the participants so that they can provide their comments within a set time limit, and after that time limit adopt the minutes and serve them on the participants.

Article 13

Public consultation

1. ACER shall organise public consultations, whenever required by law, and otherwise may organise them, where appropriate.
2. Public consultations may take place in writing in electronic format, in oral format and/or in any other suitable format.
3. ACER shall announce the public consultation on its website. The announcement shall set out the scope of the consultation, indicate how and when observations can be submitted, taking full account of the urgency and complexity of the matter. It shall provide background documents, where appropriate.
4. ACER shall notify the parties concerned of the public consultation.
5. Observations containing confidential information shall be submitted in accordance with Article 9.
6. ACER may disregard anonymous observations.
7. ACER shall make public the number of observations received, the names of the respondents, unless they should be considered as confidential, and all non-confidential responses, as well as its evaluation of the observations.
8. This Article does not apply to decisions on matters related to wholesale market integrity and transparency.

Article 14

Consultation of particular stakeholders

1. ACER shall consult regulatory authorities, transmission system operators, or other stakeholders whenever explicitly required by law. In addition, ACER may consult those stakeholders whenever appropriate.
2. The consultations may take place in writing in electronic format, in oral format and/or in any other suitable format.
3. ACER shall inform those stakeholders about the legal basis of the consultation, its scope and how and when observations can be submitted, taking full account of the urgency and complexity of the matter. It shall provide background documents, where appropriate.

4. Observations containing confidential information shall be submitted in accordance with Article 9.
5. The consultation according to this Article is without prejudice to the stakeholders' rights as parties concerned, if applicable, and without prejudice to their possibility to participate in a public consultation under the terms of Article 13. Where those stakeholders participate in a public consultation, their observations shall be treated in accordance with Article 13.

SECTION IV **PARTICIPATION OF THE PARTIES CONCERNED**

Article 15

Hearing of the parties concerned

1. ACER shall inform the parties concerned about its preliminary position on the subject-matter of the case to enable these parties to express its views.
2. ACER shall set a time limit within which the parties concerned may express in writing their views on the matter and may request in writing an oral hearing, taking account of the urgency, complexity and potential consequences of the matter. ACER may reject submissions received after the set time limit.
3. Following a submission by the parties concerned according to paragraph 2 of this Article, ACER shall organise an oral hearing upon a written request of a party concerned, which shall state the reasons for which that party wishes to be heard. In case no such written request is made, ACER may organise an oral hearing on its own initiative.
4. The oral hearing may be held in person, via telephone, via video conference, or via any other suitable means. It may be subject to the procedural safeguards that ACER deems appropriate for its integrity, such as verifying the identity of the participant. ACER shall draw up minutes of the oral hearing. They shall be drafted and adopted in accordance with Article 12(4).
5. In case of a decision to request information, ACER can inform and enable the parties concerned in accordance with paragraph 1 and 2 of this Article also by means of a simple request according to paragraph 3 of Article 10.

Article 16

Access to file

1. A party concerned has the right to access the documents which relate to the administrative procedure concerning that party and which have been obtained, produced and/or assembled by ACER in the course of the administrative procedure, with the exception of confidential information and internal documents of ACER.

2. Access to the file can be granted only after the party concerned has been informed about ACER's preliminary position according to Article 15(1) and shall be granted according to paragraphs 3 to 10 of this Article.
3. In order to be provided access, a party concerned shall submit a request to this purpose, including a signed commitment that the information thereby obtained may only be used for the procedure to which the file relates and for subsequent judicial or administrative proceedings.
4. ACER provides the party concerned with a list setting out the content of the file together with the underlying documents contained therein in accordance with the following provisions.
5. If a document contains confidential information, access can be granted only to a non-confidential version of the document or a summary of the relevant information contained therein.
6. Results of studies or reports of external contractors commissioned and approved by ACER related to the subject matter, together with the terms of reference and the methodology of the study or the report, where relevant and available, are accessible to the extent that they do not contain confidential information.
7. Documents which have been rejected or returned as unrelated to the subject matter of the procedure are not part of the file and cannot be accessed.
8. ACER is under no obligation to provide a translation of documents in the file, unless differently provided by law.
9. Access to the file is granted electronically.
10. If a party concerned considers that, after having obtained access to the file, it requires, for its defence, knowledge of specific non-accessible information contained in the documents to which access has been granted, it may submit a reasoned request to that end to ACER.

Article 17

Duty of cooperation

1. Any party concerned shall assist ACER in ascertaining the facts of the case. In particular it shall state such facts and evidence as are known to it or which can reasonably be expected to be presented by it.
2. If the party concerned fails to assist in ascertaining the facts of the case, the final decision shall be taken on the basis of the information available.

Article 18

Closure of the written and oral procedure

ACER shall inform the parties concerned about the date after which they may no longer provide their views, be it in writing or orally or in any other form. ACER may reject submissions received after the time limit set.

SECTION V **CONCLUSION OF PROCEDURE**

Article 19

Time limits for the adoption of a decision

Unless a time limit is specified by legislation, ACER shall take the decision in a reasonable time, considering the urgency and complexity of the matter.

Article 20

Content and form of a decision

1. ACER shall state in the decision the grounds on which the decision is based in a clear and unequivocal way in accordance with Article 14(7) of Regulation (EU) 2019/942.
2. The decision shall be signed by the Director of ACER, or a duly authorised delegate according to the rules governing the delegation of powers within ACER. The signature may be in electronic form.

Article 21

Notification and publication

1. ACER shall notify the decision in writing to the parties concerned in accordance with Article 8 and publish a non-confidential version thereof on its website.
2. The publication obligation referred to in paragraph 1 does not apply to decisions on matters related to wholesale market integrity and transparency.

Article 22

Information about available legal remedies

ACER shall inform the parties concerned that:

- a) according to Article 28 of Regulation (EU) 2019/942, an appeal may be brought against a decision referred to in point (d) of Article 2 of Regulation (EU) 2019/942 within two months of the notification of the decision, and that such appeal shall be in writing and shall include a statement of the grounds for appeal;
- b) according to Article 29 of Regulation (EU) 2019/942, actions for the annulment of a decision issued by ACER according Regulation (EU) 2019/942 and actions for failure to act within the applicable time limits may be brought before the Court of

Justice only after the exhaustion of the appeal procedure referred to in Article 28 of Regulation (EU) 2019/942.

Article 23

Correction of obvious inaccuracies

ACER may at any time correct clerical mistakes, errors in calculation and other obvious inaccuracies in its decisions.

TITLE III

OPINIONS AND RECOMMENDATIONS

SECTION I

INITIATION OF THE PROCEDURE

Article 24

Public notice

1. ACER may publish on its website a notice informing of the initiation of a procedure to issue an opinion or a recommendation and may invite interested parties to submit their observations.
2. Paragraphs 3 and 4 of Article 6 of these Rules shall apply, *mutatis mutandis*.

SECTION II

PROCEDURAL DOCUMENTS

Article 25

Submissions

1. For submissions, paragraphs 1, 2, 6, 7, 8 and 9 of Article 7 of these Rules shall apply.
2. The submitting party shall indicate explicitly in its submission whether it claims that the submission contains confidential information. Any such confidentiality claims shall be made in accordance with Article 27. In case a party does not indicate whether or not, in the party's view, the submission contains confidential information, ACER shall set a time limit of no more than five working days for the party to provide such indication and to raise any confidentiality claim in accordance with Article 27. If the party fails to do so, ACER may assume that the submission concerned does not contain confidential information and that the party has no objections to the disclosure of the submission in its entirety.
3. In accordance with Article 27, submissions containing confidentiality claims shall include a non-confidential version.

Article 26

Service of documents

For the service of documents, Article 8 of these Rules shall apply.

Article 27

Confidential information

1. For information claimed as confidential, paragraphs 1, 3, 5, 6, and 7 of Article 9 of these Rules shall apply.
2. Where a party claims that the information is confidential, it shall:
 - a) clearly identify the specific material or part of it which it considers to contain confidential information;
 - b) substantiate each of the confidentiality claims; and
 - c) provide a separate non-confidential version with the descriptions of the deleted information, enabling any party applying for public access to the documents whether there are sufficient grounds to request ACER to grant access to the information claimed to be confidential.
3. ACER shall assess the confidentiality claim to determine whether the information concerned can be treated as confidential, considering in particular the justification provided.
4. If the party does not comply with the requirements of paragraph 2 of this Article, in particular does not provide a non-confidential version of its submission, ACER shall set a time limit of no more than five working days to remedy the incompliance with paragraph 2. If the party fails to do so, ACER may assume that the submission concerned does not contain confidential information and that the party has no objections to its disclosure in its entirety.

SECTION III
INVESTIGATION AND ASSESSMENT

Article 28

Request for information

1. ACER may request from third parties all information necessary for the adoption of an opinion or a recommendation.
2. Paragraphs 2, 3 and 4 of Article 10 of these Rules shall apply.

Article 29

Experts

For the opinion of experts and expert reports, Article 11 shall apply.

Article 30

Meetings

1. ACER may organise meetings with third parties to gather information.
2. Paragraphs 2, 3 and 4 of Article 12 of these Rules shall apply.

Article 31

Public consultations

1. ACER shall organise public consultations, whenever required by law, and otherwise may organise them, where appropriate.
2. Paragraphs 2, 3 and 6 of Article 13 of these Rules shall apply.
3. Observations containing confidential information shall be submitted in accordance with Article 27.
4. Where required by law, ACER shall indicate how the observations received during the consultation have been taken into account and shall provide reasons where those observations have not been followed.

Article 32

Consultation of particular stakeholders

1. For the consultation of particular stakeholders with regard to the adoption of an opinion or a recommendation, paragraphs 1, 2, and 3 of Article 14 of these Rules shall apply, *mutatis mutandis*.
2. Observations containing confidential information shall be submitted in accordance with Article 27.
3. The consultation of the particular stakeholders according to this Article is without prejudice to the stakeholders' possibility to participate in a public consultation under the terms of Article 31. Where particular stakeholders participate in a public consultation, their observations shall be treated in accordance with Article 31.

SECTION IV
PARTICIPATION OF THIRD PARTIES

Article 33

Duty to cooperate

Third parties shall assist ACER in ascertaining the facts underlying the procedure for the adoption of an opinion or a recommendation. In particular they shall state such facts as are known to it or which can reasonably be expected to be presented by them.

SECTION V **CONCLUSION OF PROCEDURE**

Article 34

Time limits for the adoption of an opinion or a recommendation

Unless a time limit is specified by legislation, ACER shall issue its opinions and recommendations in a reasonable time, considering their complexity and urgency.

Article 35

Content of and form of opinions and recommendations

1. ACER shall provide in its opinions and recommendations the considerations for its conclusions in a clear and unequivocal way.
2. Opinions and recommendations shall be signed by the Director of ACER, or a duly authorised delegate according to the rules governing the delegation of powers within ACER. The signature may be in electronic form.

Article 36

Notification and publication

ACER shall notify the opinions and recommendations in accordance with the law and Article 26 of these Rules and publish a non-confidential version thereof on its website.

Article 37

Correction of obvious inaccuracies

ACER may at any time correct clerical mistakes, errors in calculation and other obvious inaccuracies in its opinions and recommendations.

Article 38

Access to documents

Access to documents may be granted in accordance with the relevant provisions regarding public access to the documents of the Agency².

² See Decision No 8/2010 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 28 November 2010 on the procedures and practical measures for applying Regulation (EC) No 1049/2001 on access to documents of the Agency. 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 (OJ L 145, 31.5.2001, p. 43).