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**EMCDDA, Management Board
Lisbon, 11-13 January 2006**

**32nd meeting
Agenda
Item V**

Document: EMCDDA/13/06

EMCDDA rules for public access to documents

Summary

In accordance with Article 6a of the Regulation (EEC) No 302/93 on the establishment of the EMCDDA, the Regulation (EC) No 1049/2001 regarding public access to documents of the EU institutions shall apply to documents held by the EMCDDA, and the EMCDDA Management Board shall adopt the arrangements for implementing this Regulation.

The proposed decision aims at adopting the EMCDDA detailed rules for the implementation of the above-mentioned Regulation (EC) No 1049/2001.

Decision

The Management Board is requested to adopt the EMCDDA detailed rules for the implementation of Regulation (EC) No 1049/2001 with regard to public access to documents held by the EMCDDA.

Decision of the Management Board of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) establishing detailed rules for the implementation of Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 with regard to public access to documents held by the EMCDDA

THE MANAGEMENT BOARD,

Having regard to Council regulation (EC) No 1651/2003 of 18 June 2003 amending Regulation (EEC) No 302/93 on the establishment of a European Monitoring Centre for Drugs and Drug Addiction¹, and in particular Article 6a thereof, which states that Regulation (EC) N° 1049/2001 of the European Parliament and the Council² shall apply to documents held by the EMCDDA and that the Management Board shall adopt the arrangements for implementing this Regulation;

whereas it is necessary that the EMCDDA adopt rules fixing the above mentioned arrangements for the implementation of Regulation (EC) No 1049/2001 with regard to public access to documents held by the EMCDDA,

HAS DECIDED AS FOLLOWS:

Article 1
Beneficiaries

1. 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 EMCDDA documents under Article 255(1) of the EC Treaty and Article 2(1) of Regulation (EC) No 1049/2001 in accordance with these detailed rules. This right of access concerns documents held by the EMCDDA, that is to say, documents drawn up or received by it and in its possession.
2. Pursuant to article 2(2) of Regulation (EC) No 1049/2001, citizens of third countries not residing in a Member State and legal persons not having their registered office in one of the Member States shall enjoy the right of access to EMCDDA documents on the same terms as the beneficiaries referred to in Article 255(1) of the EC Treaty and Article 2(1) of Regulation (EC) No 1049/2001.

Article 2
Access applications

1. All applications for access to a document shall be sent by mail, fax or email, clearly stating the reference "Application for access to EMCDDA documents".

Applications sent by mail or fax should be addressed to the Director of the EMCDDA.

The EMCDDA will set up an electronic form on its webpage to facilitate the entry of applications either on-line or via email.

2. The EMCDDA shall answer initial and confirmatory access applications within fifteen working days from the date of registration of the application. The deadline may be extended by fifteen working days, for instance, in the case of complex or bulky applications. Reasons must be given for any extension of the deadline and it must be notified to the applicant beforehand.

¹ EU OJ L 245, 29.9.2003, p. 30.

² EU OJ L 145, 31.5.2001, p. 43.

3. If an application is imprecise, as referred to in Article 6(2) of Regulation (EC) No 1049/2001, the EMCDDA shall invite the applicant to provide additional information making it possible to identify the documents requested; the deadline for reply shall run only from the time when the EMCDDA has this information.
4. Any decision which is even partly negative shall state the reason for the refusal based on one of the exemptions listed in Article 4 of Regulation (EC) No 1049/2001 and shall inform the applicant of remedies available to him.

Article 3

Treatment of initial applications

1. Without prejudice to Article 9 of this decision, as soon as the application is registered, an acknowledgement of receipt shall be sent to the applicant, unless the answer can be sent by return post.
2. The acknowledgement of receipt and the answer shall be sent in writing, where appropriate, by electronic means.
3. The applicant shall be informed of the response to his application by the head of the EMCDDA unit designated for this purpose.
4. Any answer which is even partly negative shall inform the applicant of his right to submit, within fifteen working days from the receipt of the answer, a confirmatory application to the Director of the EMCDDA.

Article 4

Treatment of confirmatory applications

1. The Director of the EMCDDA has the power to take decisions on confirmatory applications.
2. The EMCDDA staff designated for this purpose shall assist the Director in the preparation of the decision. The decision shall be taken by the Director after consultation of the EMCDDA Legal Service.
3. The decision shall be notified to the applicant in writing, where appropriate by electronic means. In case the decision is, totally or partly, negative, the applicant shall be informed of his right to bring an action before the Court of First Instance or to lodge a complaint with the European Ombudsman.

Article 5

Consultations

1. Where the EMCDDA receives an application for access to a document which it holds but which originates from a third party, the EMCDDA shall check whether one of the exceptions provided for by Article 4 of Regulation (EC) No 1049/2001 applies. If the document requested is classified under the EMCDDA security rules, Article 6 of this decision shall apply.
2. If, after that examination, the EMCDDA considers that access to it must be refused under one of the exceptions provided for in Article 4 of Regulation (EC) No 1049/2001, the negative answer shall be sent to the applicant without consultation of the third-party author.
3. The EMCDDA shall grant the application without consulting the third-party author where the document requested has already been disclosed either by its author or under Regulation (EC) No 1049/2001 or similar provisions.

4. Unless the document originates from a member State, the EMCDDA 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 Regulation (EC) No 1049/2001.
5. In all the other cases, the third-party author shall be consulted.
6. The third-party author consulted shall have a deadline for reply which shall be no shorter than five working days.
7. In the absence of a reply within the prescribed period, or if the third party is untraceable or not identifiable, the EMCDDA shall decide in accordance with the exceptions in Article 4 of Regulation (EC) No 1049/2001, taking into account the legitimate interests of the author on the basis of the information at its disposal.
8. If the EMCDDA intends to give access to a document against the expressed wishes of the author, it shall inform the latter 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.
9. If the above referred author decides to enforce opposition to the disclosure of the document, this document may only be disclosed after a final decision of the competent authority.
10. The Director of the EMCDDA, or a member of staff appointed by him, is responsible for responding to consultations by Member States regarding disclosure of documents originating from the EMCDDA, made under Article 5 of Regulation (EC) No 1049/2001.

Article 6

Treatment of applications for access to classified documents

1. Where an application for access concerns a sensitive document as defined in Article 9(1) of Regulation (EC) No 1049/2001, or another document classified under the EMCDDA security rules, it shall be handled by EMCDDA staff entitled to acquaint themselves with the document.
2. Reasons shall be given on the basis of the exceptions listed in Article 4 of Regulation (EC) No 1049/2001 for any decision refusing access to all or part of a classified document. If it proves that access to the requested document cannot be refused on the basis of these exceptions, the EMCDDA staff handling the application shall ensure that the document is declassified before sending it to the applicant.
3. The agreement of the originating authority shall be required if access is to be given to a sensitive document.

Article 7

Exercise of right to access

1. Documents shall be sent by mail, fax or by email depending on the application. If documents are voluminous or difficult to handle, the applicant may be invited to consult the documents on site. This consultation shall be free of charge.
2. If the document has been published, the answer shall consist of the publication references and/or the place where the document is available and, where appropriate, of its web address on the EMCDDA or EUROPA site.

3. If the volume of the documents requested exceeds twenty pages, the applicant may be charged a fee of EUR 0.10 per page plus carriage costs. The charges for other media shall be decided on a case by case basis but shall not exceed a reasonable amount.

Article 8
Measures facilitating access to documents

1. The coverage of the register provided for by Article 11 of Regulation (EC) No 1049/2001 shall be extended gradually. It shall be announced on the EMCDDA homepage.
2. The register shall contain the title of the document (in the languages in which it is available), its serial number and other useful references, an indication of its author and the date of its creation or adoption.
3. A help page shall inform the public how the document can be obtained, including by means of on line request forms. If the document is published, there shall be a link to the full text.

Article 9
Documents directly accessible to the public

1. This Article applies only to documents drawn up or received after the date from which Regulation (EC) No 1049/2001 became applicable to EMCDDA documents.
2. The following documents shall be automatically provided on request and, as far as possible, made directly accessible by electronic means:
 - a. agendas for the meetings of EMCDDA Management Board;
 - b. ordinary minutes of the meetings of EMCDDA Management Board, after approval;
 - c. documents adopted by the EMCDDA for publication in the *Official Journal of the European Union*;
 - d. documents originating from third parties which have already been disclosed by their author or with his consent;
 - e. documents already disclosed following a previous application.

Article 10
Entry into force

This decision shall enter into force on the day after the date of its adoption.

Done at Lisbon, 24. April 2006

For the Management Board,
The Chairman

Marcel Reimen