



DECISION OF THE ADMINISTRATIVE COUNCIL
of 13 December 2023 establishing a policy for
access to Council documents

THE ADMINISTRATIVE COUNCIL OF THE EUROPEAN PATENT ORGANISATION,

Having regard to the European Patent Convention, and in particular Article 33(2)(e) thereof,

HAS DECIDED AS FOLLOWS:

Article 1

In accordance with its administrative autonomy under Article 4 of the European Patent Convention ("EPC"), the European Patent Organisation shall assess, in accordance with its legal and policy framework, a request by a third party for access to documents submitted to the Administrative Council. Any such assessment shall be without prejudice to provisions under domestic law governing the disclosure of documents.

Article 2

In accordance with the policy for the publication of Council documents, access to Council documents shall be granted to third parties, on request and without prejudice to the provisions of the Data Protection Rules of the Administrative Council (CA/D 2/23), in line with the category to which the document has been allocated:

- (a) Public documents are published on the Organisation's website and are freely accessible.
- (b) Restricted documents are disseminated only to Council meeting participants and are not made available to the public or disclosed to third parties. Exceptionally, however, such a document may be disclosed if, in the Council's assessment, the disclosure of the document would not seriously undermine the Organisation's decision-making process or the international relations between any of the Contracting States and the Organisation, or between the Contracting States.
- (c) Confidential documents are not made available to third parties. Exceptionally, however, such a document may be disclosed if, in the Council's assessment, a requester has successfully demonstrated that the document sought is patently relevant to their case in the context of litigation proceedings and that no higher interest stands in the way of its disclosure.

Article 3

- (1) Where a third party submits a request for access to a Council document directly to the Organisation, the Council Secretariat shall process the request in accordance with Article 2.
- (2) If the request relates to a public document of the Council, the Council Secretariat shall, in accordance with Article 2(a), refer the third party to the Organisation's website.
- (3) If the request relates to a restricted or confidential document, the Council Secretariat shall assist the Chairperson of the Council in drawing up a proposal on how to handle the request. Based on the Chairperson's proposal, the Council shall, in accordance with Article 2(b) and (c), decide to grant access to the Council document or reject the request.
- (4) Once a decision has been taken, the Council Secretariat shall inform the third party accordingly.

Article 4

- (1) Where a request for access to a Council document is received by a delegation of a Contracting State, and without prejudice to the fact that the treatment of such requests is to be determined according to the rules applicable under respective domestic law, the following shall apply:
 - (a) Third parties requesting access to public documents of the Council may be referred to the Organisation's website.
 - (b) Upon receipt of a request for access to a restricted or confidential document, the delegation should contact the Council Secretariat for the Council's guidance. The Council Secretariat shall assist the Chairperson of the Council in drawing up a proposal on how to handle the request. Based on the Chairperson's proposal, the Council shall, in accordance with Article 2(b) and (c), provide its guidance as to how to respond.
 - (c) Once the Council has provided its guidance, the Council Secretariat shall inform the delegation accordingly. The delegation or the initial recipient of the request may then further process the request in accordance with their domestic law.
- (2) If the recipient of a request for access to a Council document is a public authority in a Contracting State, the receipt of the request should be communicated to the Council Secretariat through the delegation of that Contracting State.
- (3) The practices outlined in this Article shall apply, *mutatis mutandis*, to States with right of accession (Article 166 EPC) as well as observers (Article 30 EPC) in respect of documents to which they have been granted access through their participation in Council meetings.

Article 5

- (1) If a request under Article 3 relates to a non-confidential document which was submitted to the Council before this policy entered into force and has remained unpublished, the Council Secretariat shall ask the Council to decide whether or not it shall be disclosed to the requester and shall inform the requester accordingly.
- (2) If a request under Article 4 relates to a non-confidential document which was submitted to the Council before this policy entered into force and has remained unpublished, the Council Secretariat shall ask the Council to provide guidance as to whether or not it should be disclosed to the requester and shall inform the delegation accordingly.

Article 6

This decision enters into force on 13 December 2023.

Done at Munich, 13 December 2023

For the Administrative Council
The Chairperson



Josef KRATOCHVÍL