



Valletta Harbour, 7 October 2021
EASO/MB/2021/184

DECISION No 91
OF THE MANAGEMENT BOARD OF THE EUROPEAN ASYLUM SUPPORT OFFICE
of 7 October 2021
on the MedCOI Database Access Policy

THE MANAGEMENT BOARD:

HAVING REGARD to Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office¹ (hereinafter 'the EASO Regulation'), and in particular Article 29(1)(l) thereof,

WHEREAS:

- 1) Pursuant to Article 4(a) of the EASO Regulation, the Agency gathers relevant, reliable, accurate and up-to-date information on countries of origin of persons applying for international protection in a transparent and impartial manner, making use of all relevant sources of information, including, information gathered from governmental, non-governmental and international organisations and the institutions and bodies of the Union.
- 2) Pursuant to Article 4(c) of the EASO Regulation, the Agency manages and further develops a portal for gathering information on countries of origin and maintains it with a view to ensuring transparency in accordance with the necessary rules for access to such information under Article 42 of the EASO Regulation (on access to documents under Regulation (EC) No 1049/2001).
- 3) Pursuant to Article 29(1)(l) of the EASO Regulation, the Management Board shall, *inter alia*, take all decisions on the establishment and, where necessary, the development of the information systems provided for in this Regulation, including the information portal referred to in point (c) of Article 4.
- 4) The principle of transparency and the rights of individuals to access documents of EU institutions, bodies and agencies are laid down in both Article 15 of the TFEU and Article 42 of the Charter of Fundamental Rights of the EU and implemented through 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 'Regulation (EC) No 1049/2001').

¹ Regulation (EU) No 439/2010 of the European Parliament and of the Council of 19 May 2010 establishing a European Asylum Support Office, (OJ L 132, 29.5.2010, p. 11).

- 5) EASO's MedCOI Database contains mainly case-specific information on the availability and accessibility of medical treatments and medicines in third countries, gathered from a worldwide network of local experts and medical doctors and provided to EU+ countries'² first instance decision-making authorities in asylum and migration-related procedures.
- 6) A MedCOI Database Access Policy should be adopted in the form of a Management Board Decision, in order to inform the public on the modalities of regulating access to the restricted and public sections of the Agency's MedCOI Database, and the documents therein.

HAS DECIDED AS FOLLOWS:

Article 1
MedCOI Database Access Policy

1. The MedCOI Database Access Policy (hereinafter 'the Policy'), as annexed to this Decision, is hereby adopted.
2. The Policy defines the overall modalities for regulating access to the restricted and public sections of the MedCOI Database, and the documents therein, in line with the applicable legal framework.

Article 2
Entry into force

This Decision enters into force on the date of its signature.

Done by written procedure on 7 October 2021
For the Management Board



Mr. Mikael Ribbenvik
Chair of the EASO Management Board

Annex: MedCOI Database Access Policy

² EU Member States and associate countries.

ANNEX

MedCOI Database Access Policy

1. Background

EASO's MedCOI portal (hereinafter 'the Database') contains mainly case-specific information on the availability and accessibility of medical treatments and medicines in third countries³. This information is gathered by EASO from a worldwide network of local experts and medical doctors and is provided to EU authorities' first instance decision-making authorities in asylum and migration-related procedures (hereinafter 'EU+ authorities'). The information is provided to such authorities with the aim of developing a more complete factual base for their related national decision-making processes.

2. Principle of transparency

The principle of transparency and the rights of individuals to access documents of EU institutions, bodies and agencies are laid down in both Article 15 of the TFEU and Article 42 of the Charter of Fundamental Rights of the EU and implemented through Regulation (EC) No 1049/2001.

More specifically, Article 15(1) of the TFEU provides that: *'In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible'*.

Moreover, Article 42 of the Charter of Fundamental Rights of the EU provides that: *'Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium'*.

Furthermore, Article 2(1) of Regulation (EC) No 1049/2001 provides that: *'Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation'*.

The link between Regulation (EC) No 1049/2001 and EASO's legal framework is established by Article 42(1) of the EASO Regulation, which provides that: *'Regulation (EC) No 1049/2001 shall apply to documents held by the Support Office'*.

Moreover, Article 4(a) of the EASO Regulation provides that the Agency shall organise, promote and coordinate, *inter alia*, *'the gathering of relevant, reliable, accurate and up-to-date information on countries of origin of persons applying for international protection in a transparent and impartial manner, making use of all relevant sources of information, including information gathered from governmental, non-governmental and international organisations and the institutions and bodies of the Union'*.

³ As referred to in Article 49(2) of the EASO Regulation.

3. Restricted section of the MedCOI Database

The Agency and its Management Board (members) confirm their joint commitment to upholding the principle of transparency, as referred to above. However, they consider that access to the restricted section of the Database must be regulated for the following reasons:

- a) The Database includes, *inter alia*, information that is not (meant to be) publicly available and contains case-specific medical analyses. Interpretation of this specialised information requires enhanced knowledge of medical matters in migration procedures. Specific training in the navigation and extraction of the information is also necessary for the correct use of the Database;
- b) Access to the restricted section of the Database is to be given on a need-to-know basis only and in agreement with the EU+ authorities. EASO requires all internal users to complete compulsory MedCOI training modules. These internal users are designated employees of the respective EU+ authorities or any other body mandated by them to carry out research on information contained in the Database. In this respect, the Agency's limited capacity to provide the above-mentioned training and related services should also be taken into consideration;
- c) The information contained in the restricted section of the Database can form part of national administrative procedures related to migration and asylum matters. The EU+ authorities may provide relevant information from these procedures to any other person or entity, such as applicants for asylum and national appeal instances, in accordance with the applicable national laws and rules. EASO does not have the competence to intervene in such procedures by providing further access to MedCOI information, which might negatively affect the relevant procedures and operations of these authorities in the implementation of the Common European Asylum System.

In light of the above considerations, access to the restricted section of the Database is limited only to designated and duly (EASO-)trained employees in the EU+ authorities or any other body mandated by an EU+ country to carry out research on information contained in the Database (i.e., internal users).

4. Public section of the MedCOI Database

In order to facilitate transparency and good administration, any MedCOI-related information and documentation to which points (a), (b) and (c) of section 3 do not apply should, in principle, be made available to general users in a public section of the Agency's MedCOI portal.

5. Regulation (EC) No 1049/2001

For the purposes of this Policy, it is moreover important to make a distinction between the different types of access requests relating to the MedCOI Database. Namely, individuals and/or entities could either:

- a) request (full or partial) access to the MedCOI Database itself. Such requests should be dealt with as requests for information, as referred to in Article 22 of the European Code of Good Administrative Behaviour⁴; or

⁴ Available at: <https://www.ombudsman.europa.eu/en/publication/en/3510>

- b) request access to (categories of) documents within the MedCOI Database by lodging an application for public access to documents under Regulation (EC) No 1049/2001.

Provided that:

- With respect to point a) above and pursuant to this Policy, access to the restricted section of the Database is limited to designated employees of the EU+ authorities or any other body mandated by the EU+ countries, who are duly trained by EASO;
- With respect to point b) above, any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State may submit an application for public access to documents contained in the Database. All existing documents (or that can be generated) in the Database are covered by Regulation (EC) No 1049/2001. As such, any applications for public access to documents contained in the Database will be dealt with by EASO in accordance with the provisions of the aforementioned Regulation, as well as the Agency's Management Board Decision No 6 of 20 September 2011 laying down practical arrangements regarding public access to the documents held by EASO.

Article 4 of Regulation (EC) No 1049/2001 provides for a number of exceptions⁵ under which access can or shall be refused or limited. In this sense, it should be emphasised that all applications for public access to documents are duly examined and assessed by EASO, in an individual manner.

However, it should also be noted that the aforementioned general considerations for limiting access to the restricted section of the Database may on a case-by-case basis constitute a justified reasoning to refuse access to documents contained in the Database, in accordance with Article 4 of Regulation

⁵ Extract from Article 4 of Regulation (EC) No 1049/2001:

'1. The institutions 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 institutions shall refuse access to a document where disclosure would undermine the protection of:

- commercial interests of a natural or legal person, including intellectual property,*
- court proceedings and legal advice,*
- the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure.*

'3. Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's 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 institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process unless there is an overriding public interest in disclosure.

'4. As regards third-party documents, the institution shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed.

'5. A Member State may request the institution not to disclose a document originating from that Member State without its prior agreement.'

[...].

(EC) No 1049/2001. Further information on applications for public access to documents can be found on the dedicated section of EASO's website⁶.

⁶ Available at: <https://www.easo.europa.eu/about-us/public-documents-registry#Contact%20form>