

*(only the Italian version is authentic)*

## **IVASS REGULATION No. 19 OF 15 MARCH 2016**

### **REGULATION ON THE EXERCISE OF THE RIGHT OF ACCESS TO ADMINISTRATIVE DOCUMENTS**

IVASS – Institute for the Supervision of Insurance

HAVING REGARD to Law No. 241 of 7 August 1990, as amended, and in particular Chapter V, introducing provisions on access to administrative documents;

HAVING REGARD to the Decree of the President of the Republic No. 184 of 12 April 2006, regarding the regulation on access to administrative documents;

HAVING REGARD to Legislative Decree No. 209 of 7 September 2005, as amended, regarding the Code of Private Insurance;

HAVING REGARD to article 24 of Law No. 262 of 28 December 2005, which provides among other things that the principle of access to administrative documents provided by Law No. 241 of 7 August 1990, as amended, be applied, *mutatis mutandis*, to IVASS proceedings, and provides that IVASS, with its own regulations, governs the application of this principle, stating the cases of necessity and urgency or confidentiality reasons why it is permissible to derogate from them;

HAVING REGARD to article 13 of Decree Law No. 95 of 6 July 2012, converted into Law no. 135 of 7 August 2012, concerning urgent measures for the review of public spending with unchanged services for citizens and establishing the institution of IVASS;

HAVING REGARD to the Decree of the President of the Republic of 12 December 2012 laying down the IVASS Articles of Association, entered into force on 1 January 2013;

HAVING REGARD to the organisation regulation, approved by IVASS Council Resolution No. 46 of 24 April 2013 and subsequent amendments and additions;

HAVING REGARD to IVASS Regulation No. 1 of 8 October 2013 concerning the procedure for imposition of pecuniary administrative sanctions (chapter on access to documents);

HAVING REGARD to IVASS Regulation No. 2 of 8 October 2013 concerning the procedure for applying disciplinary sanctions against insurance and reinsurance intermediaries and the operating rules of the Guarantee Committee (art. 5 on access to documents);

HAVING REGARD to IVASS Regulation No. 3 of 5 November 2013 on the implementation of the provisions of article 23 of Law No. 262 of 28 December 2005, concerning the procedures for the adoption of regulatory and general acts of IVASS;

HAVING REGARD to IVASS Regulation No. 7 of 2 December 2014 concerning the identification of the terms and organisational units responsible for IVASS administrative procedures, pursuant to articles 2 and 4 of Law No. 241 of 7 August 1990;

has adopted the following

**REGULATION**

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Art. 1  
(Legislative sources)

1. This Regulation has been adopted in compliance with: articles 23, paragraph 1 and 24, paragraph 2 of Law No. 241 of 7 August 1990; article 24, paragraph 3, of Law No. 262 of 28 December 2005; article 9, paragraph 3, of Legislative Decree No. 209 of 7 September 2005.

Art. 2  
(Definitions)

1. For the purposes of this Regulation:
  - a) "interested parties" means all private entities, including those who represent public or broader interests, who have a direct, current and concrete interest corresponding to a legally protected status and linked to the document to which access is sought;
  - b) "other parties": all entities, identified or easily identifiable from the nature of the document requested, who by exercising access would compromise their right to privacy;
  - c) "code": Legislative Decree No. 209 of 7 September 2005, introducing the Code of Private Insurance;
  - d) "right of access": the right of interested parties to inspect and withdraw copies of administrative documents;
  - e) "administrative document": any representation in graphic, photo graphic, video, electromagnetic, or any other form of representation of the content of documents, whether internal or other, related to a specific procedure, held by IVASS and concerning activities of public interest, irrespective of the public or private nature of their substantive regulation;
  - f) "IVASS": Institute for the Supervision of Insurance Undertakings;

Art. 3  
(Scope)

1. This Regulation governs the procedures for exercising the right of access to administrative documents already drawn up or held permanently by IVASS, existing at the time of the application.
2. Generic inquiries as part of an overall inspection of IVASS activity are not allowed. The exercise of the right of access does not imply an obligation for IVASS to process data in its possession in order to satisfy requests.
3. This Regulation identifies the categories of documents drawn up by or otherwise available from IVASS, thereafter excluded from access in relation to the withdrawal of the right of access referred to in article 24, paragraph 2, of Law No. 241 of 7 August 1990.
4. Access to the documents of the procedure for the imposition of pecuniary administrative sanctions is governed by IVASS Regulation No.1 of 8 October 2013 and, for anything not expressly provided herein, by this Regulation.

5. Access to documents relating to procedures for the award and execution of public contracts, which IVASS is part of, is governed by articles 13 and 79, paragraph 5, *quater*, of Legislative Decree No. 163 of 12 April 2006 and subsequent modifications.

#### Art. 4

(Data and information published on the IVASS website or Bulletin)

1. IVASS, in the "*Transparency*" section of its website [www.ivass.it](http://www.ivass.it), makes publicly available the data, information and documents required by Legislative Decree No. 33 of 14 March 2013, as amended and integrated, in accordance with the Regulation on publicity and transparency of data and information on the organisation and activities of IVASS of 4 February 2014.
2. IVASS publishes general regulations and recommendations on its website and through its monthly bulletin makes publicly available every other important measure relating to entities subject to supervision.

#### Art. 5

(Entities entitled to access)

1. The application for access can be submitted by all private entities, including those who represent public or broader interests, who have a direct, current and concrete interest corresponding to a legally protected status and linked to the document to which access is sought.
2. The acquisition of administrative documents by public entities is inspired by the principle of fair institutional cooperation.

#### Art. 6

(Application for access)

1. In the application for access, the applicant must indicate:
  - a) their personal details, specifying, if it is someone other than the subject concerned, also the personal details of the latter and their representational power;
  - b) the details of the document which is the subject matter of the application i.e. the items that will help identify it, specifying, if possible, the administrative procedure of reference;
  - c) the reasons for the application, specifying and demonstrating the interest related to the scope of the application, corresponding to a status which is legally protected and linked to the document to which access is requested.

#### Art. 7

(Informal access)

1. If, with regard to the nature of the requested document, no other parties are present, the right of access is exercised by an informal, also verbal application.

2. The application, examined immediately and without formalities, is accepted by: **a)** indication of the publication containing the news; **b)** presentation of documents; **c)** withdrawal of copies or other appropriate mode.
3. A record is kept indicating that the documents have been displayed or a copy withdrawn; it is annotated in the documents of the competent organisational unit that acknowledged the request.

Art. 8  
(Formal access)

1. If immediate informal acceptance of the application is not possible i.e. if doubts arise regarding the legitimacy of the applicant, their identity or their representational powers, the existence of the interest based on the information and documentation provided, the accessibility of the document or the existence of other parties, IVASS invites the interested party to present a formal application for access to the competent organisational unit, pursuant to art. 9.
2. The formal application for access may be submitted electronically – under the conditions required by art. 38 of Presidential Decree No. 445 of 28 December 2000 and by articles 4 and 5 of Presidential Decree No. 68 of 11 February 2005 and art. 65 of Legislative Decree No. 82 of 7 March 2005 – or in person, by mail or by fax.
3. The application indicates the elements referred to in article 6 and carries the date and subscription and be supported by a copy of an identification document.
4. If the interested party, whether a natural or legal person, is represented by another party, the latter attaches to the application the authorisation provided for this purpose, presenting a copy of their identification document and that of the authorising party.
5. The period of thirty days required by Law No. 241 of 7 August 1990 for the response to the application runs from the date of receipt of the same.
6. If the application for access is made to an administration other than that against which the right must be exercised, the administration receiving the application immediately sends it to the competent administration, giving notice thereof to the interested party in accordance with art. 6, paragraph 2 of the Presidential Decree No. 184 of 12 April 2006. In this case, the term referred to in art. 11, paragraph 3 runs from receipt of the application by IVASS.

Art. 9  
(Competent authority for access)

1. The application for access is examined by the organisation unit that drew up the requested document or that holds it permanently, identified pursuant to IVASS Regulation No. 7 of 2 December 2014.
2. If the application is forwarded to an organisation unit other than the competent unit pursuant to paragraph 1, the former undertakes to transmit it immediately to the competent authority.

3. The person responsible for the procedure is the principal of the unit responsible for handling the application or, by designation of the latter, another employee assigned to the same unit.

Art. 10  
(Other parties)

1. In the event that other parties are present, pursuant to art. 2, the person responsible for the access procedure is required to notify them by sending a copy of the application for access, also electronically. Any substantiated objection of the other parties, also transmitted electronically, must be received within 10 days of receipt of the notification. After that term, IVASS actions the application. In this case the term of the access procedure resumes from the time of receipt of the objections.
2. The objections of the other parties are examined in accordance with Law No. 241 of 7 August 1990 and this Regulation.

Art. 11  
(Evaluation of application for access)

1. In the case of an irregular or incomplete application, the person responsible for the procedure invites the applicant, within ten days from receipt of the application, to correct or supplement it. The term of the procedure begins to run again from the submission of the correct or complete application.
2. Where the application for access relates to documentation drawn up by another administration but held permanently by IVASS, the latter notifies the request to the administration concerned, which must submit any objection within 10 ten days of receiving the notification. After that term, the person responsible for the procedure actions the application.
3. Within thirty days from receipt of the application, complete in all its elements, or from the expiry of the term referred to in paragraph 2, IVASS implements the measure for acceptance or reasoned decision of partial acceptance or refusal.

Art. 12  
(Acceptance of application for access)

1. The application acceptance document indicates the competent organisation that can arrange for inspection and withdrawal of copies of the documents, as well as the date and time of access, agreed, where possible, with the interested party. The documents must not be removed from the place where they are inspected or altered in any way.
2. At the request of the interested party, the person responsible for the procedure may initiate the access request also on-line, under the conditions referred to in art. 8, paragraph 2.
3. The release of photocopies is subject to reimbursement of the cost of reproduction, which is communicated to the interested party also through entry in the record referred to in the following paragraph.

4. The completion of the access operations is duly recorded in a statement signed by the interested party and the person responsible for the procedure.

#### Art. 13

(Documents excluded from access in cases of confidentiality or disclosure bans envisaged by law)

1. The following elements are excluded from access since they are covered by professional secrecy under article 10 of the code: administrative documents containing news, information and data, including statistics, in the possession of IVASS because of its institutional and supervisory activity exercised in relation to insurance undertakings, intermediaries and other entities subordinated to it, where access may prejudice the effectiveness of the activity of IVASS. It is understood that, pursuant to article 10, paragraph 5 of the code, grounds of confidentiality may not be invoked against the Minister of Economic Development and against the two branches of Parliament acquiring data, news and information according to the competences and procedures set forth in their respective regulations.
2. Without prejudice to the provisions of art. 14, access is granted in any permissible case where required in the course of administrative, penalty, pecuniary or disciplinary proceedings on the part of insurance undertakings or insurance intermediaries subject to proceedings, with the exception of the documents covered by confidentiality in cases provided for by law.
3. In the case of documents containing sensitive and legal data, access is allowed to the extent strictly necessary and under the terms provided by art. 60 of Legislative Decree No. 196 of 30 June 2003.

#### Art. 14

(Other documents exempted from access)

1. Except as provided in article 24, paragraph 6, letter d) of the Law No. 241 of 7 August 1990, in relation to the need to safeguard the privacy of third parties, exclusion from access, pursuant to article 24, paragraph 2 of the above law also applies to:
  - a)** the minutes of meetings of the Board of Directors and the Joint Directorate of IVASS, in whole or in part, in cases where they relate to documents covered by professional secrecy or documents excluded from access under this Regulation;
  - b)** opinions given by the Legal Services Office of IVASS to the structures or to the governing bodies relating to actual or potential disputes and all documents to be used in the legal defence of IVASS or in the investigation of complaints against it;
  - c)** documentation relating to medical tests and the health of people;
  - d)** administrative documents relating to psychological-attitudinal information contained in the personal file of the employee of IVASS;
  - e)** documents pertaining to relations between IVASS and: other supervisory authorities; European Union institutions; bodies of other States or other international organisations, of which disclosure has not been authorised;

- f)** information and reports transmitted by IVASS to the criminal courts or received by IVASS from said criminal courts;
- g)** under tendering procedures, documents concerning know-how and business or scientific secrets.

Art. 15  
(Deferral)

1. IVASS may, within fifteen days of receiving the application for access, defer access if deemed necessary to temporarily protect the interests indicated in articles 13 and 14 or to safeguard specific needs with particular reference to the preparatory stage of measures, in relation to documents the knowledge of which could jeopardise the success of the administrative action.
2. Access is also deferred, as well as in the cases expressly provided for by a legislative provision, if it concerns documents drawn up by a public administration department that turns out to have deferred access.
3. The act that provides for the deferral indicates its duration.

Art. 16  
(Changes)

1. The IVASS regularly reviews the adequacy of document categories excluded from access, as identified in this Regulation.

Art.17  
(Repeals)

1. ISVAP measures Nos. 39 and 40 of 5 September 1995 are repealed as from the date of entry into force of this Regulation.
2. Any regulatory reference to ISVAP measures Nos. 39 and 40 of 5 September 1995 is to be understood as made to this Regulation.

Art. 18  
(Publication and entry into force)

1. This Regulation is published in the Official Journal of the Italian Republic and in IVASS Bulletin and website.
2. This Regulation enters into force on the day after its publication in the Italian Official Journal.

On behalf of the Joint Directorate  
The President