

Additional concerns to Complaint 1261/2020/MAS:

I) Frontex withheld documents falling under the scope of requests.

On 9 January 2020, one of the parties to this complaint filed a request for access to documents related to Frontex's meetings with industry during 2018 and 2019. The initial request can be found here: https://www.asktheeu.org/en/request/meetings_with_industry_during_20

A list of meetings was provided to Frontex on the basis of the meetings with industry it lists on its own website. The request also added an additional point:

“as well as for any other industry meeting, day, event, workshop or gathering of any kind, hosted by Frontex in 2018 and/or 2019, and not listed above”

For all of these meetings, the following documents were requested:

1. All agendas of these meetings/workshops/events/gatherings/...;
2. A list of all attendees, including the name of the company, group, or organisation of any kind each attendee represents;
3. All presentations by Frontex shown during the course of these meetings/workshops/events/gatherings/...;
4. All documents prepared by Frontex for the purpose of these meetings and given out or distributed among the attendees (such as – but not limited to – handouts, leaflets, briefings or background notes);
5. All presentations by any other speaker – be it industry representative, academic, Member State representative, or attendee of any kind – shown during the course of these meetings/workshops/events/gatherings/...;
6. All reports, summaries, minutes, notes, or record-keeping of any kind produce by Frontex as an outcome of these meetings/workshops/events/gatherings/...

Frontex provided a series of documents in response to this request. However, in court case T-849/19, company Leonardo SpA cites the following information:

“the minutes of the Informative Meeting held at FRONTEX's premises on 28 October 2019;”

The meeting mentioned by Leonardo falls under the scope of the initial request filed on 9 January; likewise, the phrasing used by Leonardo seems to indicate minutes exist of the meeting hosted by Frontex, thus falling under the scope of the request, point 6.

In its response to the request filed on 9 January, Frontex did not include any documents relating to the meeting mentioned in case T-849/19.

Frontex should immediately release any documents (as per the 6-point list included in the initial request) related to the 28 October 2019 meeting, as well as any other documents regarding any other meeting falling under the scope of this request, and which Frontex has chosen to withhold.

In yet another case, Frontex claimed it had no e-mails that its press officers had sent to journalists criticizing their reporting on Frontex (see <https://fragdenstaat.de/dokumente/7695-semsrott-arnepad-2020-0003/>). In fact, we do know of one of these e-mails since they were posted on Twitter by a journalist. It's available here: <https://twitter.com/frederikrichter/status/1161633524379717634>

II) Frontex frequently engages in superfluous, extensive requests for clarification upon registering a request, where they provide no assistance whatsoever

Frontex is increasingly delaying the registering and processing of access to documents requests by demanding extensive and repetitive clarifications upon reasonably clear access to documents requests.

It is worth reminding that Article 6 (2) of Regulation 1049/2001 states:

“If an application is not sufficiently precise, the institution shall ask the applicant to clarify the application **and shall assist the applicant in doing so**, for example, by providing information on the use of the public registers of documents.”

Frontex’s requests for clarification provide no assistance whatsoever. Recent examples of this include simply stating:

“the following points of your application are too wide to enable Frontex to ascertain the documents. To enable us to register and process your application, further specifics are necessary”.

In subsequent correspondence, Frontex actually asked the requester to provide the date of the incident the requested documents relate to, in order to better identify them – a piece of information which Frontex surely already holds and however is not, to date, in the public domain.

Please note that these exchanges happened in the course of processing this access to documents request which is especially important given the human rights implications of the case: <https://fragdenstaat.de/anfrage/danish-patrol-boat-incident/> which already included, from the very start: a clear timeframe, a clear reference to the incident in question, and a detailed list of the documents falling under the scope of the request, including examples.

In the course of processing a request on documents for the Frontex portal, Frontex claimed the very specific request was "significantly wide and unspecific" while not providing any reason how it came to this conclusion. The request is still not answered:

<https://fragdenstaat.de/anfrage/documents-on-pad-application-tool/#nachricht-532450>

Yet another request for two expert opinions were still not answered despite being specific enough (<https://fragdenstaat.de/anfrage/gutachten-zu-anschaffungen-von-waffen-und-munition/#nachricht-525858>).

Exchanges like these ones – which can go on for weeks – are becoming more and more frequent, and are effectively delaying the processing of access to documents requests by many additional working days.

Furthermore, these exchanges are not compliant with Article 6 (2) in the sense that not only the agency does not provide assistance; it actually puts the burden on the requester of blindly identifying documents that might or might not exist.

To this extent, it is worth reminding that the absence of a proper register of Frontex documents is yet another obstacle in the process of dealing with these requests for clarifications.

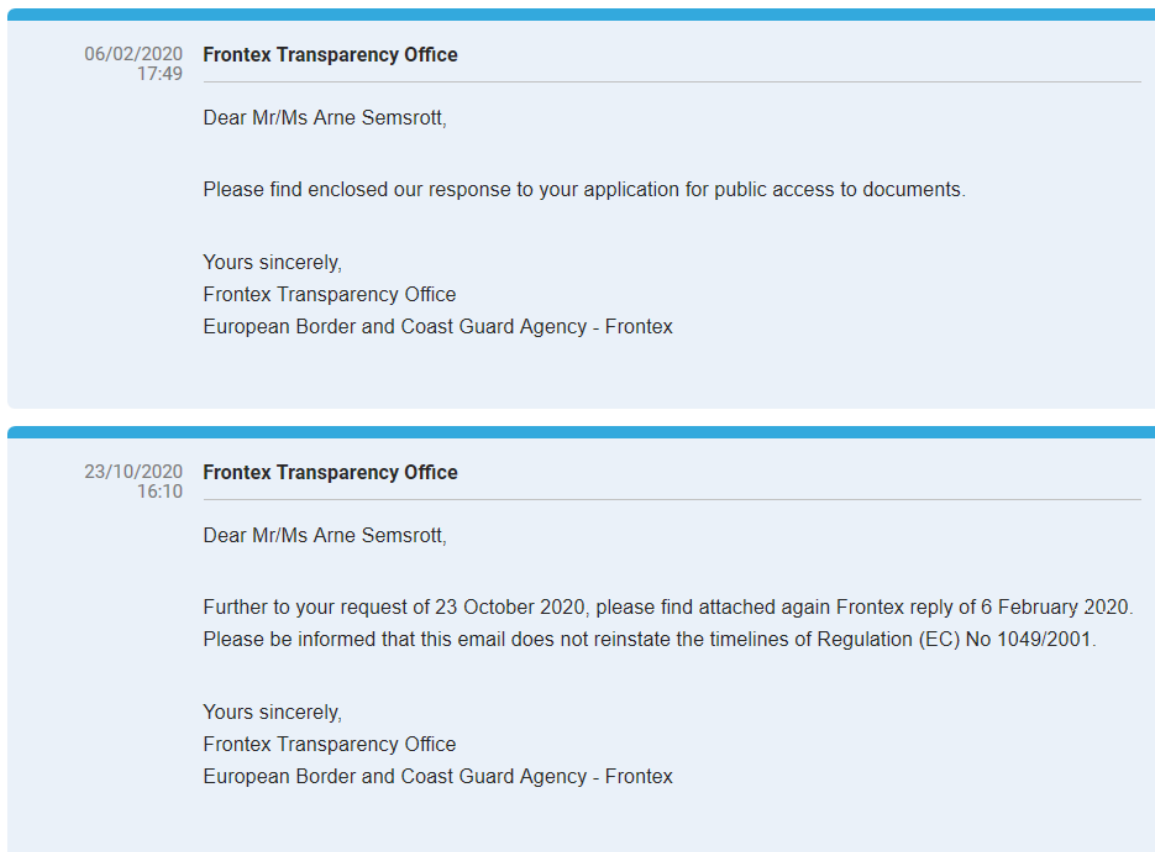
(Please note that we would gladly provide links or screenshots regarding the examples cited above, but given that these exchanges took place in Frontex’s access to documents platform, and that the access codes provided by Frontex have since expired, we have no way of accessing those messages in order to provide them in the context of this complaint.)

Frontex should cease this recurrent practice immediately, and only request clarifications when absolutely necessary. Frontex should cease this practice immediately specifically in cases where concrete timeframes, references, lists of documents and examples have already been provided.

When Frontex does feel the need to request a clarification, Frontex should provide assistance in line with Article 6 (2) of Regulation 1049/2001. In order to do so, Frontex should also set up a comprehensive register of documents in compliance with its obligation under Article 11 of the Regulation.

III) Additional problems with the portal

Frontex has made grave user interface mistakes with its portal, rendering it useless for some users. For example, a screenshot from the Frontex portal regarding request PAD-2020-00003 shows that average users - including one of the complainants - will not find attachments on the portal when Frontex claims are there.



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