



Mr/Ms Arne Semsrott, Mr/Ms Luisa Izuzquiza
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Our ref: TO/PAD-2020-00193
Please quote when replying.

Warsaw, 14 December 2020

Your application for access to European Border and Coast Guard Agency (Frontex) documents

Dear Mr/Ms Luisa Izuzquiza, dear Mr/Ms Arne Semsrott,

In reference to your application registered on 29 October 2020, for which the deadline has been extended by 15 working days on 23 November 2020¹, asking for access to

Frontex tweeted that it "has launched an internal inquiry into suspicious incidents recently reported by the media. So far, no documents or other materials have been found to substantiate any accusations of violations of the law or Frontex Code of Conduct"

(see <https://eur02.safelinks.protection.outlook.com/?url=https%3A%2F%2Ftwitter.com%2FFrontex%2Fstatus%2F1321008603252346882&data=04%7C01%7Cfrontex%40frontex.europa.eu%7C8075095ddb8e4af7ed2708d87a716ee2%7C1a17d6bf51554e22bf292ba5da77f037%7C0%7C0%7C637393975360774219%7CUnknown%7CTWFpbGZsb3d8eyJWljiMC4wLjAwMDAiLCJQJjoiV2luMzliLCJBTil6Ik1haWwiLCJXVCI6Mn0%3D%7C2000&sd=JT3kTR%2BXF2oChL1CX3U0gISLbv%2FMd71j01wNM6%2FkV5Q%3D&reserved=0>)

To this regard, under the right of access to documents in the EU treaties, as developed in Regulation 1049/2001, we are requesting any and all documents which were reviewed by Frontex in the internal inquiry it mentioned on its Twitter account, until 27 October 2020 939 am CET.

Please be informed that access to the requested documents must be refused as they contain

- personal data, in particular, the name of an individual. The disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European Union legislation regarding the protection of personal data and therefore has to be precluded pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001;
- information regarding the technical equipment deployed in an operational area. Disclosing such information would be tantamount to disclosing the exact type and capabilities of the equipment and would enable third parties, e.g. by combining this information with other sources, to draw conclusions regarding usual positions and movement patterns. This would open way for abuse, as numbers, types and specifications of equipment used are indicative of

¹ In accordance with Article 7(3) of Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

- similar equipment used for succeeding years. Releasing such information would thus benefit criminal networks, enabling them to change their modus operandi and, consequently, result in hampering the course of ongoing and future operations of a similar nature. This would ultimately obstruct the purpose of such operations: to counter and prevent cross-border crime and unauthorized border crossings. In this light, the disclosure of information regarding the technical equipment deployed would undermine the protection of the public interest as regards public security in the sense of Article 4(1)(a) first indent of Regulation (EC) No 1049/2001;
- information regarding the number and profiles of officers deployed in the operational area. Disclosing such information would be tantamount to disclosing the weaknesses and strengths of operations and pose a risk to their security. As a result, the course of ongoing and future similar operations would be hampered, ultimately defeating their purpose to counter and prevent cross-border crime and unauthorized border crossings. Consequently, the disclosure of such information would undermine the protection of the public interest as regards public security as laid down Article 4(1)(a) first indent of Regulation (EC) 1049/2001;
 - details of the operational area and cannot be released. As ongoing operations tend to cover similar operational areas as the operations conducted in preceding years, disclosing details of previous operational areas would be tantamount to disclosing the current state of play. This would provide smuggling and other criminal networks with intelligence, enabling them to change their modus operandi, which would ultimately put the life of migrants in danger. Consequently, the course of ongoing and future operations of similar nature would be hampered by depriving the operations of any strategy and element of surprise, ultimately defeating their purpose to counter and prevent cross-border crime and unauthorized border crossings. In this light, the disclosure of documents containing such information would undermine the protection of the public interest as regards public security in the sense of Article 4(1)(a) first indent of Regulation (EC) No 1049/2001
 - information related to reporting tools and methods used by law enforcement officials used to conduct border control tasks and counter criminal activities. Its disclosure would jeopardize the implementation of ongoing and future operations, and thus facilitate irregular migration, trafficking in human beings and terrorism as the effectiveness of law enforcement measures would be significantly reduced. As disclosing this information would undermine the protection of the public interest as regards public security, this part cannot be disclosed pursuant to Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.

Furthermore, access to the documents has to be refused as their disclosure would undermine the protection of the public interest as regards international relations as laid down in Article 4(1)(a) third indent of Regulation (EC) No 1049/2001¹. Effective cooperation with third countries is crucial for Frontex and therefore, the unilateral disclosure of these documents must be refused as such would jeopardise the mutual trust of all parties, an essential prerequisite for establishing international relations.

All documents are further subject to ongoing investigations. Their disclosure at the present stage would jeopardise the ability of Frontex and Member States to evaluate any irregularities and to verify facts and information with a view to make a decision. No overriding public interest that is objective and general in nature and not indistinguishable from individual or private interests for the release of these documents is ascertainable in the present case. Consequently, access to these has to be refused based on Article 4(2) third indent of Regulation (EC) No 1049/2001 as their disclosure would undermine the protection of the purpose of investigations.

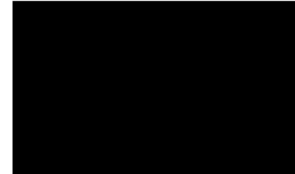
Therefore, a partial release of these documents cannot be undertaken, as their redaction would be disproportional in relation to the parts that are eligible for disclosure, simultaneously undermining the principle of sound administration. More specifically, the administrative burden necessary to identify and redact the releasable materials would be disproportionate to the public interest in the disclosure exercise itself, while the released documents would not convey any informative value due to their



significantly reduced form. Consequently, the partial disclosure of the documents at issue must be refused owing to the particular circumstances of the present case.

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, within 15 working days of the receipt of this letter, you may submit a confirmatory application to Frontex to reconsider its position. Based on Article 8 of Regulation (EC) No 1049/2001, Frontex will reply to you within 15 working days from the registration of such application. You can submit your confirmatory application by post or electronically.

Yours sincerely,



Timo Knaebe
Senior Legal Officer