

Mr/Ms Arne Semsrott

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Our ref: TO/PAD-2020-00092
Please quote when replying.

Warsaw, 22 January 2021

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

Dear Mr/Ms Semsrott,

In reference to your application registered on 17 December 2020, for which the time limit has been extended by 15 working days on 21 January 2021¹, asking for access to

- *The source code of the tool;*
- *The decision to create the tool as approved by the relevant Frontex official;*
- *All contracts - including all annexes - with the entities that developed the tool for Frontex;*
- *All instructions and specifications for the development of the tool as provided to the entities;*
- *All correspondence - including all attachments - with the entities leading up to and during the creation of the tool until its completion;*
- *All assessments carried out by Frontex concerning the platform, in particular assessments regarding compliance of or impact on fundamental rights, EU law, privacy and/or data protection*

In regard to **point 1** of your application, please be informed that 4642 documents were identified. Access to these has to be refused as they contain details crucial for the functioning and security of Frontex IT environment and would display strengths and vulnerabilities. As such information would enable the exploitation of this knowledge and have an impact on Frontex functioning, including its possibility to execute its mandate. Consequently, their release, even in parts, would undermine the protection of the public interest as regards public security and has to be refused based on Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.

With reference to **point 2** of your application please find attached one document, parts of which had to be deleted as they contain:

- personal data, such as names of individuals and/or characteristic features which could lead to the identification of individuals. The disclosure would undermine the protection of privacy and the integrity of the individual, in particular in accordance with European

¹ In accordance with Article 7(3) of 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 (OJ L 145, 31.5.2001, p. 43).

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.

- details crucial for functioning and security of Frontex' IT environment as explained above;
- detailed information on the means of communication used by law enforcement officials. The disclosure of this information would put law enforcement officials' work in jeopardy and harm the course of future and ongoing operations. As the disclosure of such pieces of information would undermine the protection of the public interest as regards public security, it must therefore be refused as laid down in Article 4(1)(a) first indent of Regulation (EC) No 1049/2001;
- information regarding currently ongoing decision-making processes. The ongoing discussions taking place within Frontex and under its auspices and involving numerous stakeholders require special protection. Namely, disclosing the redacted parts would reveal negotiation positions of the stakeholders, which would erode the mutual trust among all participants. Such information would enable third parties to draw preliminary conclusions and thus, hamper ongoing and future negotiations. As 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, these documents cannot be released based on Article 4(3) of Regulation (EC) No 1049/2001.

Please be informed that Frontex does not hold documents regarding **point 3** of your application.

In relation to **points 4, 5 and 6** of your application, 125 documents were identified, access to which has to be refused based on the exceptions outlined in regard to point 2. Moreover, the disclosure of these documents would undermine the protection of the purpose of the ongoing investigation by the European Ombudsman. As no overriding public interest that is objective and general in nature and not indistinguishable from individual or private interests for the release of this information is ascertainable in the present case, information pertaining to this variable cannot be released based on Article 4(2) indent 3 of Regulation (EC) No 1049/2001. A partial release of the documents could not be undertaken, as the redacting 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 circumstances of the present case.

Kindly be reminded that the copyright of the disclosed document rests with Frontex and making this work, available to third parties in this or another form without prior authorisation of Frontex is prohibited. Please also note that Frontex does not assume liability stemming from the use of the document.

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