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Our ref: TO/PAD-2021-00150
Please quote when replying.

Warsaw, 29 June 2021

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

Dear Mr/Ms [REDACTED]

In reference to your application registered on 20 May 2021 for which the time limit has been extended by 15 working days on 11 June 2021¹, asking for access to

Dokumenten, die folgende Informationen enthalten

Die Gesamte interne Kommunikation von Frontex zur Rechtssache EuGH T-31/18 betreffend Anträge auf Zugang zu Dokumenten.

Thus

Documents containing the following information.

All Frontex internal communication on ECJ case T-31/18 concerning requests for access to documents.

For which you clarified on 13 May 2021

Please send me all Frontex's internal communications on CJEU case T-31/18.

Internal communication refers to correspondence between Frontex staff, instructions from line managers, management decisions and legal Directorate-General conclusions on the judicial procedure and other internal notes or notes on the procedure.

Please find attached five documents. If not indicated otherwise, redactions pertain to 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 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. Further redactions are indicated as concerning to:

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).

- Legal advice: access to which has to be denied as its disclosure would undermine the protection of such advice as its release would result in the Frontex Legal and Procurement Unit no longer being able to provide frank, objective, and comprehensive advice to the remainder of the Agency and/or Member States as the sphere of trust, in which this advice, embodied in the respective section, was provided, would be severely impaired. As all Frontex entities and/or Member States of the European Union have an interest in receiving such frank, objective and comprehensive legal advice in order to make informed decisions, its release has thus to be refused. 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 elements is ascertainable in the present case, based on Article 4(2) second indent of Regulation (EC) No 1049/2001, this section cannot be released.
- Opinions: access to which has to be refused as these sections contain opinions for internal use as part of deliberations and preliminary consultations within Frontex and/or with Member States as their disclosure would seriously undermine Frontex decision-making process. 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 elements is ascertainable in the present case, based on Article 4(3) second subparagraph of Regulation (EC) No 1049/2001, this section cannot be released.
- Ongoing decision-making: disclosing the redacted part would seriously undermine internal decision-making processes regarding current and future activities of Frontex and Member States. 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 decision-making processes. 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, they cannot be released based on Article 4(3) of Regulation (EC) No 1049/2001.
- Modus Operandi: The non-disclosed part contains detailed information regarding the modus operandi of law enforcement officials performing border control. Disclosing such information would expose the working methods applied in ongoing and future operations, thus obstructing their effectiveness in prevention of cross-border crime and unauthorized border crossings. In consequence, it would undermine the protection of the public interest as regards public security and thus, cannot be disclosed pursuant to Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.
- Assets deployed: The non-disclosed parts contain information regarding the technical equipment deployed in the operational area by Frontex and Member States. 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 and types of equipment used in previous operations are indicative of similar numbers and types 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 within the meaning of Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.

² 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).

Further “Internal communication” is subject to two or more of the exceptions referred to above. However, the number of elements falling under these exceptions in the documents led me, while balancing all interests, to decide against their partial release.

Kindly be reminded that the copyright of the document/s rests with Frontex and making this/these work/s, 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/s.

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,

