

Mr/Ms Marie Naass

Email: [REDACTED]

Our ref: TO/PAD-2021-00300
Please quote when replying.

Warsaw, 1 December 2021

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

Dear Mr/Ms Naass,

In reference to your application registered on 3 November 2021 for which the time limit has been extended by 15 working days on 25 November 2021¹, asking for access to

1. *all Serious Incident Reports for 30 July 2021 with regards to your aerial operation in the Central Mediterranean Sea on July 30th 2021,*
2. *the ICC Daily report in connection to your aerial operation in the Central Mediterranean Sea for July 30th 2021*
3. *JCB Minutes from July 30th 2021*
4. *the Daily reporting package for July 30th 2021*
5. *all communication exchanged among the Fundamental Rights Officer and the Executive Director regarding any incidents having taken place on 30 July 2021 and in relation to your aerial operation in the Central Mediterranean*
6. *all other internal Frontex communication (between any and all units or staff) regarding your aerial operation in the Central Mediterranean Sea on 30 July 2021*
7. *all communication exchanged between Frontex and the Libyan authorities, Frontex and the Italian authorities and Frontex and the Maltese authorities in relation to your aerial operation in the Central Mediterranean Sea on July 30th 2021*
8. *all pictures and videos related to your aerial operation in the Central Mediterranean Sea on July 30th 2021*
9. *the list of all available documents related to your aerial operation in the Central Mediterranean Sea on July 30th 2021*

as further clarified by you:

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).

I confirm that the request for access to the JCB Minutes from July 30th 2021 and the Daily reporting package for July 30th 2021 refer to your aerial operation in the Central Mediterranean Sea on July 30th 2021.

Please be informed that with reference to **point 2** of your application Frontex identified one document, access to which has to be refused, as it contains:

- details of the operational area of an ongoing operation which cannot be released as it 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 unauthorised border crossings. In this light, the disclosure of documents containing such information 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 1049/2001²;
- 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 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 unauthorised 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.

As regards **point 3**, Frontex identified one document, access to which has to be refused, as it contains information regarding the technical equipment deployed in the operational area as explained above and details crucial for situational awareness at the external borders of the European Union which is used by Frontex to conduct its operational activities and to develop risk analyses. The disclosure of this information would hamper the effectiveness of Frontex operations and jeopardise the efforts carried out by the European Union and Member States to curtail criminal activities at the external borders. It would thus benefit criminal networks especially those involved in people smuggling and trafficking in human beings, which would put the lives of migrants in danger. Hence, the disclosure of this information 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. Additionally, this information is also used for the development of risk analyses, which constitute a specific form of internal decision-making processes based on the intelligence derived from previous and presently ongoing activities and have a bearing on the conduct of current and future operations. Being an important base for determining the strategic orientation of the Agency, the possibility to conduct such analyses without interference is crucial for Frontex to effectively exercise its mandate. Consequently, releasing this information would enable third parties to gain insights into this decision-making process and, with ascertainable likelihood, result in depriving Frontex of the possibility to conduct such analyses wholly independently, free from any external pressure or third-party influence. In sum, releasing this information would seriously undermine Frontex internal 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 this information is ascertainable

² 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).

in the present case, information pertaining to this variable cannot be released based on Article 4(3) of Regulation (EC) No 1049/2001.

Please be further informed, that in regard to **point 4** Frontex identified six documents, access to which has to be refused as five of them contain information on the operational area, technical equipment deployed and details crucial for situational awareness at the external borders as explained above. In addition, five of these documents contain personal data, such as names of individuals which could lead to the identification of individuals. Their 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. Access to one of the six documents identified under this point has to be refused as that document contains information on the operational area and technical equipment as explained above.

Concerning **point 6**, Frontex identified 27 documents, access to which has to be refused as they contain information on the operational area, technical equipment, details crucial for the situational awareness at the external borders and personal data as explained above. Moreover, these documents cannot be disclosed as they contain:

- 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 Frontex operations and pose a risk to their effectiveness. 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 unauthorised border crossings. Consequently, the disclosure of such information would undermine the protection of the public interest as regards public security as laid down in Article 4(1)(a) first indent of Regulation (EC) No 1049/2001;
- detailed information related to reporting tools and methods used by law enforcement officials to conduct border control tasks and counter criminal activities. Its disclosure would jeopardise the implementation of ongoing and future operations, and thus facilitate irregular migration and trafficking in human beings 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 is not disclosed pursuant to Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.

With reference to **point 7**, Frontex identified 36 documents, access to which has to be refused as they contain information on the operational area, technical equipment, human resources, reporting tools and methods, details crucial for the situational awareness at the external borders, and personal data as explained above.

Finally, with regard to **point 8** two documents and raw data contained in a database were identified. Access to these has to be refused as they contain information on the operational area, technical equipment, human resources, reporting tools and methods, details crucial for the situational awareness at the external borders, and personal data as explained above.

A partial release of the 73 documents and raw data contained in a database identified in total under **points 2, 3, 4, 6, 7, 8** could not be undertaken, as their redaction would be disproportionate 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 elements would be disproportionate to the interest in the disclosure exercise itself, while the released documents would not convey any informative value due to their significantly reduced form. Consequently, a partial disclosure of the documents at issue must be refused owing to the particular circumstances of the present case.

Please be further informed that Frontex does not hold documents applied for under **points 1, 5 and 9** of your application.

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