

Mr/Ms Lea Pfau

Email: [REDACTED]

Our ref: TO/PAD-2021-00014  
Please quote when replying.

Warsaw, 22 January 2021

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

Dear Mr/Ms Pfau,

In reference to your application registered on 13 January 2021, asking for access to

*Further to the applications PAD-2020-00123 and PAD-2020-00224, this constitutes the third and last application*

*On 6 July 2020, Frontex Director Fabrice Leggeri stated before the European Parliament's LIBE Committee "There was clearly apparently a misunderstanding of the operational plan." This statement was made in reference to the incident involving a Danish patrol boat which reportedly refused to follow an order to push back migrants at sea.*

*Application 3 Operational Plans*

Please be informed that access to these documents must be refused as they pertain to ongoing operations. Thus, granting access to these documents would impact on the European Union's and Member State's endeavours to counter and prevent cross-border crime and unauthorized border crossings. This would benefit criminal networks by enabling them to change their modus operandi and consequently result in hampering the course of these ongoing operations, which would ultimately put the life of migrants in danger. In particular, these documents cannot be released 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<sup>1</sup>;
- contain 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 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

<sup>1</sup> 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).

- 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;
- refer to details of the operational area since disclosing details of this area would be tantamount to disclosing the current operational focus area. 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 currently ongoing and future 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;
  - contain detailed information regarding the modus operandi of law enforcement officials performing border control and coast guard duties. 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 and, in consequence, undermine the protection of the public interest as regards public security, precluding a release pursuant to Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.

A partial release of the documents could not 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,



*Senior Legal Officer*