

Mr/Ms

Email

Our ref: TO/PAD-2022-00278
Please quote when replying.

Warsaw, 25 August 2022

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

Dear

In reference to your application registered on 5 August 2022, asking for access to

The three Serious Incident Reports (SIRs) concerning potential violation of fundamental rights, launched by the Fundamental Rights Officer (FRO) concerning search and rescue cases in the Central Mediterranean including in the Maltese search and rescue region, which are now being handled (Ref. Ares(2022)5154685 - 15/07/2022), and any report (interim or final) on the matter.

Please be informed that Frontex has identified three documents, one of which is herewith attached. Kindly note that some limited parts of the document are expunged as they contain:

- personal data, and/or characteristic features which could lead to the identification of individuals whose 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 1049/2001¹.
- 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 by itself but especially in combination with other sources would undermine the protection of the public interest as regards public security, these parts are not disclosed pursuant to Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.
- 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

¹ 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).

human beings, which would put the lives of migrants in danger. Hence, the disclosure of this information by itself but especially in combination with other sources 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 in the present case, the detailed information included in the document cannot be released based on Article 4(3) of Regulation (EC) No 1049/2001.

Access to two of the identified documents must be refused as in addition to personal data, detailed information related to the reporting tools and methods used by law enforcement officials and sensitive operational information, as explained above, they contain 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 by itself but especially in combination with other sources 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.

In addition, the investigations triggered by these two documents are not yet concluded and their disclosure at the present stage would jeopardise the ability of Frontex and Member States to evaluate, in this ongoing structured and formalized procedure, any irregularities and to verify facts and information, possibly with a view to take a position. Consequently, access to these documents 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. 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.

A partial release of the aforementioned two 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 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.

Subject to any intellectual property rights of third parties, the document/s may be reused provided that the source is acknowledged and that the original meaning or message of the document/s is not distorted. Frontex is not liable for any consequence resulting from the reuse of this/these document/s.

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, within 15 working days of the receipt of this reply, you may submit a confirmatory application.



A confirmatory application, indicating the reference of your initial application, may be submitted electronically to: <https://pad.frontex.europa.eu/padrequests/create>,

by mail to: European Border and Coast Guard Agency, Transparency Office,
pl. Europejski 6, 00-844 Warsaw/Poland

or by email to: pad@frontex.europa.eu or frontex@frontex.europa.eu.

Based on Article 8 of Regulation (EC) No 1049/2001, Frontex will reply within 15 working days from the registration of such application.

Yours sincerely,

[Decision signed electronically]
Case Handler of the Transparency Office