

Proposal for a solution in cases 1261/2020/MAS and 1361/2020/MAS as to how Frontex can better deal with requests for public access to documents

Solution - 07/05/2021

Case 1261/2020/PB - Opened on 01/10/2020 - Recommendation on 21/06/2022 - Decision on 15/12/2022 - Institution concerned European Border and Coast Guard Agency (Maladministration found) |

Case 1361/2020/PB - Opened on 01/10/2020 - Recommendation on 21/06/2022 - Decision on 15/12/2022 - Institution concerned European Border and Coast Guard Agency (Maladministration found) |

Executive Director

European Border and Coast Guard Agency

Dear Mr Leggeri,

I am writing to propose to you some improvements to your Agency's handling of requests for public access to documents.

I very much appreciate your positive response to my previous suggestion [1] that Frontex could revisit parts of its administrative procedure in order to handle access requests more efficiently. In fact, you went further and introduced an integrated system for the processing of access requests, including a public access portal [2] . I would like to recognise this initiative at the close of these inquiries.

Furthermore, I believe that your success with this system can be enhanced by addressing a number of technical shortcomings which are absent in the procedures of the main EU institutions. I am confident that they could be addressed swiftly and without any disproportionate work for your Agency. Essentially, they concern communication with people seeking access to documents:

- Currently, Frontex uses a **copyright claim** that seems overly restrictive. Frontex forbids applicants from sharing its documents, even though the EU rules require that institutions provide



public access to documents [3] . I am not aware of other EU institutions that similarly prohibit such sharing. I understand that Frontex is in the process of setting up a 'Public Access Registry', which will contain, and make accessible to the public, all documents to which access was granted. Once this registry is set up, the copyright claim will, in any case, lose its significance. I trust you will agree that in line with the principles of good administration, the current warnings that Frontex issues, (which may be read by some as a legal threat) regarding individual's freedom to share, use, or refer to publicly disclosed documents are unnecessary.

- I also note that **Frontex's general copyright policy** seems to be much more restrictive than the copyright policies of other institutions that I have looked into. I would appreciate if you could ask your staff to update Frontex's copyright policy so as to be in line with best practices of other EU institutions.

- Frontex has also decided to limit the **time that applicants can consult the documents** they receive through the new public access portal (15 working days). I do not believe that any administrative or legal problems arise in allowing applicants access to the documents for a much longer period.

- Finally, your Agency's new public access portal appears not to provide for the option of **receiving Frontex's reply and documents directly by email** . In addition to constituting a new hurdle for individuals, this reduces the seamless technical communication with some online transparency platforms operating in Europe [4] .

In the annex to this letter, I have set out a specific proposal for solution that reflects how I believe Frontex could best resolve these issues.

I would very much hope that your personal attention to the above matters can ensure that the proposed changes are made. This would allow me to close this inquiry and the two cases. I would be grateful to receive your reply before 11 June 2021. Once I have received your reply, we will send a copy of it to the complainant together with a copy of this letter.

Thank you for your continued cooperation.

Yours sincerely,

Emily O'Reilly

European Ombudsman

Strasbourg, 07/05/2021

Enclosure: Ombudsman's specific proposal for solution

Annex

Ombudsman's specific proposal for solution [5]



1. Frontex should no longer use its current copyright claim when replying to requests for public access to documents. As a suggestion for improvement, [6] Frontex should consider updating its copyright policy based on the best practices of other EU institutions.

2. Frontex should ensure that all documents uploaded into its public access portal can be accessed by applicants for at least two years. [7]

3. Frontex should, when it receives requests for public access to documents through civil society platforms [8] or when it is otherwise the express wish of an applicant, send its replies by e-mail and not through its public access portal. This means that the actual reply to a request for access to documents or to a confirmatory request - and not only a notification to access Frontex's public access portal - should be sent to an applicant by e-mail, unless there is a very good reason (which should be explained) for Frontex not to do so. [9] To allow individuals to contact Frontex with further questions or to submit confirmatory applications [10] in an easy manner, Frontex should, in its replies, indicate an e-mail address through which applicants can contact Frontex.

[1] Solution proposal in case 1616/2016/MDC: <https://europa.eu/!vP84HY> [Link].

[2] <https://pad.frontex.europa.eu/padrequests/create> [Link].

[3] See Regulation (EC) 1049/2001 regarding public access to European Parliament, Council and Commission documents: <http://data.europa.eu/eli/reg/2001/1049/oj>.

[4] For example, *AskTheEU.org* or *FragDenStaat.de* websites.

[5] Under Article 3(5) of the Ombudsman's Statute and Article 5 of the Ombudsman's implementing provisions.

[6] Under Article 6(1) of the Ombudsman's implementing provisions.

[7] According to Article 2(4) of the Ombudsman's Statute a complaint can be made within two years of the date on which the facts on which it is based came to the attention of the person lodging the complaint.

[8] Such as *FragDenStaat.de* or *AskTheEU.org*.

[9] A very good reason, for example, could be that individual documents are too large to be sent in an e-mail.

[10] Under Article 7(2) of Regulation (EC) 1049/2001.

