

Ms Emily O'Reilly
European Ombudsman

Your ref: Inquiry cases 1261/2020/MAS and 1361/2020/MAS
Our ref: ICO/MIJU/4967b/2021
Please quote when replying.

Warsaw, 9 June 2021

Subject: Frontex's reply as regards Proposal for a solution as to how Frontex can better deal with requests for public access to documents

Dear Ms O'Reilly,

Thank you for your letter of 7 May 2021 and your suggestion for a solution, which Frontex welcomes. I would also like to thank Messrs Peter Bonnor and Peter Dyrberg for their availability, on 18 May 2021, to informally discuss your proposal.

As regards your suggestions related to Frontex' **copyright claim** and **general copyright policy**, please be informed that Frontex has already commenced revising its copyright claim and has been in contact with other EU entities. In this regard, Frontex also takes into account the roadmap for the establishment of the Frontex register of documents, presented to you as part of case 2273/2019/MIG¹, which will also be populated with documents made available following applications under Regulation (EC) No 1049/2001². Until this process is concluded, the use of the current copyright claim will be evaluated and adjusted on a case-by-case basis.

Following your suggestion that **all documents uploaded into the Frontex public access portal can be accessed by applicants for at least two years**, we have immediately looked for the necessary adjustments for our online portal to extend the accessibility for a two-year period in line with Article 2(4) of the Statute of the European Ombudsman³. As the colleagues from the Transparency Office explained to Mr Bonnor on 18 May 2021, upon the applicants' request, we have frequently been sending new access links since 15 January 2020 (e.g. in case PAD-2020-00003 which led to case 1939/2020/MAS - 20/4/2021). While Frontex will continue doing so until a sustainable solution is found, applicants have themselves been publishing documents made available to them on private portals - kindly see in this regard the attached "Sample_case_1" and "Sample_case_2".

In reply to your **third proposal** to reply by e-mail and not through the Frontex public access portal, I would like to note that the Frontex online portal constitutes a major step in comparison to the previous fragmented approach of handling public access to document applications. It was applied to cope with the drastic increase in number and complexity of such applications, and the numbers and file sizes of documents released. In this regard, it remedies the technical shortcomings Frontex encountered by the use of email communications alone. Consequently, moving away from this integrated environment may lead to a regression and result in having to apply solutions that are no longer adequate to

¹ Decision in case 2273/2019/MIG on the European Border and Coast Guard Agency's (Frontex) public register of documents

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).

³ Decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties adopted by Parliament on 9 March 1994 (OJ L 113, 4.5.1994, p. 15) and amended by its decisions of 14 March 2002 (OJ L 92, 9.4.2002, p. 13) and 18 June 2008 (OJ L 189, 17.7.2008, p. 25).

meet our legal obligations under Regulation (EC) No 1049/2001. More concretely, the Frontex online portal, which creates a common workspace for all Frontex entities contributing to a case and enables a seamless communication with applicants - including the provision of documents and the decision - accommodates the needs of all external and internal stakeholders, permits an efficient processing of applications and ensures compliance with the personal data framework.

Concerning your reference to the procedures of the main EU institutions, I would like to point out that our online portal, while taking into account other approaches used EU-wide, is a bespoke solution which considers the needs of applicants and Frontex. It also takes into account the Agency's infrastructure as well as available technical and human resources to achieve administrative fairness for both applicants and Frontex. Thanks to the Frontex online portal we have been able to continue processing an increasing number of applications for public access to documents without any disruptions or deviations since the advent of COVID-19 in 2020.

I would like to again refer to the presentation to Mr Bonnor on 18 May 2021 of the one-stop-shop side of the Frontex online portal available to applicants. The Frontex online portal enables the applicants to access all communications exchanged with Frontex, the final reply and the documents released as illustrated in the attached "Sample_case_3_fragdenstaat" and "Sample_case_4_asktheeu". As is shown in these threads, the communication between the Frontex online portal and private platforms functions well and was not contested in case 104/2020/EWM⁴. Also, I would like to recall that Frontex has always internally followed-up upon alleged technical problems of its online portal and I am pleased to state that since the launch of the Frontex online portal on 15 January 2020, no technical shortcomings on our side occurred. As the Frontex online portal has enabled us to streamline our operations, ensure a timely delivery of multiple and/or bulky documents to applicants and limit shortcomings in this regard, I would like to emphasise again that Frontex has always accepted communication in any written form and will continue doing so. In this regard, Frontex has been receiving initial and confirmatory applications as well as follow-up queries through all email addresses indicated on its website, which are forwarded without undue delay to the Transparency Office, which processes applications for public access to documents. The current information to applicants regarding available legal remedies includes as a final sentence: "You can submit your confirmatory application by post or electronically." This will be amended to include a link to the Frontex online portal, the postal and email address.

In conclusion, I would like to avail myself of this opportunity to underline again the Agency's readiness to continue our dialogue with you, also at a technical level, in order to reassess and improve our practices in line with the principles of good administration.

Yours sincerely,


Fabrice Leggeri
Executive Director

Annexes for your consideration only - please do not disclose to complainants or third parties:

- *Sample_case_1*
- *Sample_case_2*
- *Sample_case_3_fragdenstaat*
- *Sample_case_4_asktheeu*

⁴ Decision in case 104/2020/EWM on the European Border and Coast Guard Agency's refusal to deal with a request for public access to documents based on procedural grounds of 20 February 2020.