

Your ref. Joined Cases 1261/2020 and 1361/2020

Ms Emily O'Reilly

European Ombudsman

Dear Mrs O'Reilly,

In reply to your letter of 21 June 2022, I would like to inform you that Frontex took note of your recommendation and maintains, as Frontex has brought forward in the intermediary replies and discussions with your staff, that its current practice, applied also in other EU agencies, is in line with the requirements of Regulation (EC) No 1049/2001¹, which was confirmed in your decision regarding the same subject matter: 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.

Today, with the availability of various digital engagement tools with citizens and an increasing role of governmental and non-governmental portals, communication platforms and social media, an email can no longer be considered as a main common means of communication. Many public administrations have actually discontinued communication by e-mail. Frontex communicates with applicants through its PAD ICT tool. It was decided to improve the experience of end-users and make available several functionalities. Granting access to documents based on individual applications is done seamlessly. Frontex accepts all forms of incoming written communication, as well as seamlessly fulfils applications via online civil society/transparency portals.

It has to be noted that there is a significant difference between communication with applicants and enabling automatic uploads of Frontex's replies on the different external platforms. The former is fully ensured, as we believe was successfully demonstrated to the European Ombudsman on several occasions. The latter is a matter of a technical solution, the choice of which, in Frontex's opinion, cannot be imposed on an EU agency.

Frontex would like to stress that the Agency developed good administrative practices in order to facilitate the exercise of the right of access, and all of its endeavours are aimed at striving a balance between applicants' fundamental right to transparency and its administrative capacity for viable management of PAD-related processes, ensuring in particular equal treatment of all applicants. In this regard, Frontex did not use an expression "administrative fairness for Frontex" (paragraph 16 of the Recommendation), but mentioned achieving "*administrative fairness for both applicants and Frontex*".

Furthermore, Frontex has to reiterate that the Agency would encounter serious difficulties in managing public access to documents' applications (processing requests, managing internal and external communication, following-up on deadlines, ensuring standardization and coherence), if it had to send its replies and disclose documents entirely by email.

However, taking into consideration your recommendation, Frontex accepts to limit the access requirements for applicants revisiting their cases during the 26-month validity of the links, with due regard to maintaining an adequate level of ICT security, by no longer requiring a captcha to log into an existing PAD case.² This will potentially enable automatic transfers of Frontex's answers from its PAD ICT tool to civil society/transparency portals. In addition,

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).

² At the same time, in order to ensure ICT security, the token must be kept as it limits the number of potential attacks by brute force of unauthorized external users.

Frontex will improve accessibility for persons with disabilities by adjusting the captcha requirement on the landing page for first time applicants.

Further to this, and as recommended by you, Frontex will continue collaborating with other EU institutions, bodies and agencies to continuously improve its processing of applications for public access to documents, including best practices regarding electronic case management tools.

As regards your recommendation that Frontex should dedicate the resources that are needed for handling the predictably large number of access requests, please be informed that the Transparency Office was recently strengthened with an additional 0.5 full time equivalent. Frontex will also address this point further in the context of the Agency's overall staffing plans under discussion and further staff increase will be assessed in the upcoming staff allocation exercise. Additionally, the Agency conducts professional trainings for Frontex case handlers to reinforce their capacity.

Frontex welcomes as well your suggestion to draw up a manual on how it handles public access requests. Frontex maintains that its processing of applications for public access to documents is based on the jurisprudence of the Court of Justice of the European Union, guided by decisions of the European Ombudsman and takes into account best practices used in EU bodies, institutions and agencies. Consequently, to better illustrate the process for applicants, Frontex will develop a manual and publish it on its landing page.

We remain at your disposal for any further information you may require.

Yours sincerely,

Electronically signed

Aija Kalnaja
Acting Executive Director