

Your ref. Case OI/4/2022/PB

Ms Emily O'Reilly
European Ombudsman

Subject: Frontex's reply to the request from the European Ombudsman to reconsider the Ombudsman's recommendation on the time taken by the European Border and Coast Guard Agency (Frontex) to deal with requests for public access to documents (case OI/04/2022)

Dear Ms O'Reilly,

Thank you for your letter of 7 November 2023 inviting the Agency to reconsider its position as communicated on 31 August 2023 concerning your recommendation on the time taken by Frontex to deal with requests for public access to documents.

As stated in our reply of 31 August 2023, Frontex is strictly committed to giving the fullest possible effect to the right of public access to documents as laid down in Regulation (EC) No 1049/2001 and to this end the Agency is constantly searching for sustainable solutions within the statutory framework. In this regard, we fully agree with your statement that Regulation (EC) No 1049/2001 does not provide a concrete timeline within which an application for access to document is to be registered and, as such, it is good practice to register sufficiently clear requests within a maximum of one to two working days. I would like to emphasise and inform you that this is already the current approach of Frontex. The Frontex Transparency Office consults the relevant unit/s to which the application pertains with the aim that the application will be registered within maximum two working days unless the application is not sufficiently clear, or it is evident that access to a significantly large number of documents is sought. Even if the application itself is drafted in a short manner and contained in one single communication, Frontex always applies the above-referred diligence check in consultation with the relevant unit/s to prevent pre-mature registrations of imprecise applications and/or a unilateral narrowing down.

Let me stress that it is only in instances where the request is not clear or pertains to a large number of documents that could not be individually assessed within the regular timelines that the Agency engages with applicants prior to registration of the application and within maximum one working day from its receipt. This is done to ultimately serve the interests of applicants by ensuring the widest possible public access to documents as laid down in Article 1(a) of Regulation (EC) No 1049/2001. The alternative, as elaborated in our previous replies, could lead to the registration of significantly voluminous requests which, in the absence of a commonly agreed solution, would permit Frontex to unilaterally declare a solution, i.e. the unilateral narrowing down of the scope of the request to a reasonable number of documents. Such unilateral decisions may not be in the interest of the applicant. Frontex's approach of promptly engaging with applicants to develop mutually acceptable solutions for requests involving significant numbers of documents instead facilitates meaningful cooperation between applicants and Frontex and aims at the timely registration of the widest possible scope of all received requests. I am convinced that ultimately these practices can be considered as prudent and in fact constitute sound

administration and are in accordance with Regulation (EC) No 1049/2001 as is particularly evident in its travaux préparatoires.

As regards your views on Frontex's temporary suspension of statutory time-limits, I agree that this is a serious matter which Frontex does not take lightly. I would like to make it evidently clear that Frontex fully respects and is strongly committed to upholding applicants' right to seek external review at your office or legal remedy at the EU Courts. This commitment is reflected by the fact that in only 14 out of the 469 total applications received in 2022 by Frontex were the time-limits suspended. Such extraordinary and temporary halting of the time-limits following premature registration of imprecise applications exclusively serves the purpose of obtaining clarification from the applicant to make the application processable. Frontex always strives to identify imprecisions as early and comprehensively as possible and avoids making multiple clarification requests to applicants.

The Agency thus also welcomes your recommendation that a "correction" of a pre-mature registration should optimally be undertaken within 2-3 working days from registration. Nonetheless, the European Commission's practice referred to in your recommendation has the additional procedural element of "restarting the process once it has received the necessary clarifications" from the applicant. As pointed out in my letter of 31 August 2023, Frontex stands ready to consider this Commission practice, however, to this end we would welcome receiving clarifications from you on a number of identified risks related to the overall fairness, efficacy, and legal certainty of this alternative approach. In this regard, I would kindly like to refer you to our concerns regarding the European Commission's approach on page seven of the annex to the aforementioned letter.

Concluding, I would like to sincerely thank you again for your visit to the Agency's headquarters in Warsaw and want to stress that I highly value the work and function of the European Ombudsman. Therefore, my team and I stand ready for further exchanges and constructive dialogues that will enhance Frontex's commitment to transparency within our tasks and mandate. As part of this commitment, I would like to inform you that, upon my initiative to reform the structure of the Agency, the Transparency Office is going to be relocated to further my involvement and oversight in the processing of public access to documents applications pursuant to Regulation (EC) No 1049/2001.

Yours sincerely,

Electronically signed

Hans Leijten
Executive Director

Annex - Ref. ARES(2023)5915536 - 31/08/2023



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ANNEX

1. Issue of delayed registration of requests for very long/many documents

In the onset, Frontex does not share your view that its “practices involve [...] not applying [the statutory time-limits] at all” and would welcome further clarifications in this regard. The Agency concurs with you, as shown in our submissions in this case and discussed with your team in previous cases pertaining to large applications, that “[T]he legislation requires requests to be handled promptly”, which is key to our work. However, we cannot agree with singling out “civil society actors” in your next opening paragraph as Regulation (EC) No 1049/2001, contrary to e.g. the Aarhus Regulation¹, is deliberately “applicant blind”. Frontex treats all natural and legal persons seeking access to its document equally.

It also needs to be emphasised that neither in this nor in previous cases discussed with your team, such statement was made explicitly or implicitly: “Frontex considers that it cannot register a request before a ‘fair solution’ has been found.” Rather, Frontex underlines that in adherence with Article 1(a) of Regulation (EC) No 1049/2001, Frontex first tries to seek a fair solution before embarking on a unilateral narrowing down of a wide request - in particular given that, as you requested, conducting negotiations after registration would constitute a significant pressure on an applicant and could result in him/her making a concession that would limit the scope of the application. In any case, for all applications, where Frontex was able to identify a vast number of documents prior to registration, so far Frontex was always able to find a commonly fair solution together with applicants before the time-limits were invoked.

In reply to your other statements and recommendations, Frontex strives to limit the time taken to arrive at fair solutions in mutual agreement with applicants, which had been subject to previous cases before the European Ombudsman and were not criticised and which include proposing the immediate partial registration of applications that can be processed within the timeframe and proactively following up on proposals made to applicants that remain unanswered.

Furthermore, Frontex would like to reiterate that in accordance with Regulation (EC) No 1049/2001, Frontex handles all applications for PAD promptly². While a concrete timeframe for the prompt handling of applications has not been specified in your letter of 30 May 2023, Frontex acknowledges and starts handling applications regardless of their volume or complexity on the day of receipt or, at the latest, the following day, as also recommended in decisions of the European Ombudsman.

Recalling our previous submissions in this and other cases to you, Article 7(1) of Regulation (EC) No 1049/2001 clearly distinguishes between (i) acknowledging receipt of an application, and (ii) the

¹ Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies.

² As laid down in Article 7(1) of Regulation (EC) No 1049/2001.

registration of an application³. Only the latter triggers the 15-day time-limit to reply and all other timelines stipulated in Articles 7 and 8 of Regulation (EC) No 1049/2001 and the fact that only Article 7(1) of Regulation (EC) No 1049/2001 distinguishes between these two actions, shows the legislator's intention to provide for a "window" where the institution may seek to find, together with the applicant, a fair solution as laid down in Article 6(3) of Regulation (EC) No 1049/2001 to enable such widest possible access. At this stage of the processing of an application, no timelines are triggered, and the applicant is thus not disadvantaged in regard to further remedies within Article 8 of Regulation (EC) No 1049/2001 as stated in our previous submissions. The fact that Article 8 of Regulation (EC) No 1049/2001 regulating confirmatory applications that build on decisions for initial applications does not foresee any such a "window", as by this stage such is no longer necessary, buttresses this understanding of the aim of Regulation (EC) No 1049/2001: enabling the widest possible access while not infringing on the applicant to seek further legal remedies.

Concretely, in a prompt manner and with the view of finding a commonly acceptable fair solution in exceptional cases where the request concerns a large number of documents, in accordance with Article 6(3) of Regulation (EC) No 1049/2001, Frontex invites applicants to suggest their preferred way forward while at the same time offering possible solutions for the applicant's consideration. As soon as a commonly acceptable fair solution has been formally found and consented to by the applicant, Frontex registers an application, and with it, the time-limits start running.

At this point, Frontex would also like to address your interpretation of its statement in paragraph 11 of your letter, where you quote "As recognised in the case-law of the Court of Justice [...]", which you interpreted in paragraphs 6 and 11 as "requiring" Frontex to postpone the registration. This is not the case, and we would like to clarify that by the term "recognition", we understood that the case-law "permits" us to do so in the interest of the applicant and without infringing on subsequent rights to legal remedies, as outlined above. In this vein, Frontex would also like to clarify your interpretation, in paragraphs 15, et seq. of your letter, of Frontex argument based on the wording of sentences 1 to 3 of Article 7(1) of Regulation (EC) No 1049/2001, which you interpret again as "to require the EU institutions" to seek a fair solution: The EU institutions have the possibility to seek such solutions *before* triggering the timelines.

Travaux préparatoires of Regulation (EC) No 1049/2001

Frontex approach, as outlined above through the "windows" metaphor, is supported by the travaux préparatoires of Regulation (EC) No 1049/2001 feeding into the legislative train:

Article 5(1) and (2) of the Proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents, submitted by the Commission on 28 January 2000⁴, provides:

1. All applications for access to a document shall be made in writing in a sufficiently precise manner to enable the institution to identify the document. The institution concerned may ask the applicant for further details regarding the application.

In the event of repetitive applications and/or applications relating to very large documents, the institution concerned shall confer with the applicant informally, with a view to finding a fair solution.

2. Within one month of registration of the application, the institution shall inform the applicant, in a written and reasoned reply, of the outcome of the application.

These provisions thus contain a distinction, as remnant in sentences 1 to 3 of Article 7(1) and Article 6(3) of Regulation (EC) No 1049/2001, between the phase before and after registration - shown also through the separation into two paragraphs - and even already contained a mandatory fair-solution-finding process.

Particularly important is that at this stage, the EU institution "shall confer with the applicant informally", thus not providing discretion but requiring a mandatory endeavour to find a solution.

³ Article 7 of Regulation (EC) No 1049/2001.

⁴ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52000PC0030>

Furthermore, this endeavour is of an informal nature, as at this stage besides the receipt of the application, the formal part has not commenced - this formal part thus only commences with paragraph 2 of this provision: upon registration.

It has to be concluded that the very structure of Articles 5(1) and (2) provide for the sequence of events as of receipt of an application: receipt - possibility to ask for further details - mandatory informal conferring to find a solution - registration.

Finally, it is noteworthy that Article 6 of the Proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents, submitted by the Commission on 28 January 2000, intended to regulate confirmatory applications, did not contain such a distinction, as at this stage, no differentiation between a pre- and post-phase is possible and no fair solution mechanism is necessary.

In the course of the discussions between the legislative bodies, the European Parliament suggested on 16 November 2000⁵ to change Article 5 (1) and (2) to read:

1. All applications for access to a document shall be made in writing in one of the official languages of the institutions in a sufficiently precise manner to enable the institution to identify the document. The institution concerned may ask the applicant for further details regarding the application for the purposes of identifying the documents.

“In writing” also comprises applications in electronic form such as fax or e-mail.

2. Within two weeks of registration of the application, the institution shall inform the applicant, in a written reply, of the outcome of the application and, if the application is accepted, transmit the documents within the same period.

Thus, while changing the content of paragraphs 1 and 2 and proposing to omit the - mandatory - obligation to find a solution for large documents, a distinction is still made between the phase ante and post registration through the separation of the different procedural steps through paragraph 1 and 2. The fact that this proposal retained the possibility to ask for further details shows that paragraph 1 refers to a point in time before the registration, which only commences with invoking paragraph 2.

Also here, the sequence of events is retained.

In the compromise Amendments 103 and 104 of 3 May 2001⁶, whose Articles 5 and 5a (new) are already very similar to Article 6 and 7 of Regulation (EC) No 1049/2001, a new wording for Article 5a (new), paragraph 1 was introduced, again distinguishing between the pre-registration and post-registration phase:

- 1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 15 working days from registration of the application, the institution shall either grant access to the document requested and provide access in accordance with Article 7 within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 2.*

In Article 5(3) of this proposal, the fair solution was reintroduced, this time with a discretionary character:

In the event of an application relating to a very long document or to a very large number of documents, the institution concerned may confer with the applicant informally, with a view to finding a fair solution. While the possible actions during the “window” between acknowledgment of receipt and registration were thus “outsourced” to Article 5 (equivalent to Article 6 of Regulation (EC) No 1049/2001), such

⁵ *Texts adopted, Thursday, 16 November 2000 - Strasbourg,*
https://www.europarl.europa.eu/doceo/document/TA-5-2000-0515_EN.html

⁶ https://www.europarl.europa.eu/doceo/document/TA-5-2001-0221_EN.html

inclusion of a “window” was deliberate and maintained the common view of the co-legislators since commencing the legislative procedure that seeking a fair solution would be best placed to occur prior to registration. Otherwise, such possibility could have been omitted from the onset, or at the important junctures of 16 November 2000, 3 May 2001 or at the latest on 30 May 2001, when Regulation (EC) No 1049/2001 as it stands today, was adopted.

In sum, the structure of Article 7(1) of Regulation (EC) No 1049/2001 entails the same distinction between a pre-registration (sentences 1 and 2) and a post-registration-phase in its sentence 3. The French and German language versions of Regulation (EC) No 1049/2001 also support this reading. Any voluntary endeavour by an EU institution during the pre-registration phase thus falls under the “outsourced” provision- as it is no longer contained in the still sequential 7(1) of Regulation (EC) No 1049/2001 but now in Article 6(3) of Regulation (EC) No 1049/2001. While this outsourcing to find a fair solution to Article 6(3) has no implications on the sequence of events in Article 7(1), the fact that 6(3) still refers to an *informal* conferring shows that this voluntary endeavour would take place before the registration of the application, as intended on 28 January 2000. Any endeavour post-registration is thus of a *formal* character and within the 15/30-day-deadlines as “the processing of requests outside the statutory time-limit” is strictly prohibited as you correctly stated in paragraph 21 of your letter.

Concluding, this reading of Article 7(1) sentences 1 to 3 in conjunction with Article 6(3) of Regulation (EC) No 1049/2001 is also supported by the necessity to have legal certainty: neither the applicant nor an EU institution would benefit from an informal conferring after registration as this could lead to an alteration of the application and thus go against the formality of the post-registration phase, which commences with the registration.

By considering now your claim that “if no fair solution is found, the statutory time-limit would never start running”, Frontex would like to underline that as part of its processing of applications, Frontex rapidly invites applicants to consider multiple solutions for the further processing of broad applications, including the possibility to register without delay all those parts of the application that are not too wide to be processed within the timeframes of Regulation (EC) No 1049/2001. The European Ombudsman has concurred with this approach in past cases and even suggested good practices in this regard, which Frontex applies. And while, as outlined above, Frontex was always able to find a solution with an applicant, this would not mean that in future cases where such could not be found, Frontex would refrain from registering the case; rather, e.g. the case could indeed be registered and, after continuing to engage with the applicant, the scope be narrowed down unilaterally, if no solution is found.

It is thus that the time taken to find a fair solution with applicants prior to registration, in Frontex’s views, is well balanced vis-à-vis the advanced stage in the process, where jurisprudence⁷ specifies that in order to ensure that an applicant is not infringed of his/her possibility to avail him/herself of legal remedies⁸, no deviation from the timelines⁹ is possible as otherwise this right could be jeopardized through this delay in replying.

As noted in our intermediary replies to you, Frontex would nevertheless recall once more that as soon as the application timelines are running, and after having exhausted all means to find a fair solution during which the timelines continue to run, the institution is permitted¹⁰ to unilaterally declare a solution, i.e. to unilaterally narrow down the scope of the request to a reasonable number of documents. The eventual solution, i.e. a unilateral narrowing down, cannot be considered as fair at this point in time: This solution would no longer be based on a meaningful cooperation between applicants and Frontex and thus fail to fully safeguard the interests of applicants and provide the widest possible access to documents as laid down in Article 1(a) of Regulation (EC) no 1049/2001, especially if Frontex knows about the high number of documents forming part of the application from the onset.

⁷ Judgment of 2 October 2014 in Case C-127/13 P *Guido Strack v European Commission*, para. 28; Judgment of 15 January 2013 in Case T-392/07 *Guido Strack v European Commission*, para. 46 et seq.

⁸ In particular proceedings before the CJEU and the European Ombudsman.

⁹ In particular of Article 8 of Regulation (EC) No 1049/2001.

¹⁰ Judgment of 14 December 2017 in case T-136/15, *Evropaïki Dynamiki v European Parliament*, para. 82 et seq.

Given that “what is meaningful or meaningless to the applicant cannot be determined by the institution charged with replying to [the] request”¹¹, Frontex considers its practice of engaging with applicants to find a mutual solution for wide applications prior to registration as in fact protecting the interests of applicants. This practice allows applicants to participate in a meaningful deliberation and enables applicants to consider their interests without the possibility of a unilateral narrowing down looming over this engagement.

Frontex can therefore respectfully not agree with your arguments in this case, which contradict your findings in past similar cases, i.e. that its approach risks putting pressure on applicants to agree to a fair solution as applicants are invited to consider multiple solutions to serve their interests without the risk of a unilateral narrowing down of the scope. An extension of the initial time-limits¹² may also become less likely after having agreed on a fair solution with applicants under this approach, by ensuring that registered applications cover a mutually accommodating scope. We would thus stress again that this approach adheres to the foreseen time-limits and does not infringe on applicants’ possibility to avail themselves of legal remedies.

Frontex would also like to note here that its practice of promptly engaging with applicants prior to registration with the aim of finding a fair solution and providing the widest possible access to documents not only ensures the equal treatment of all already pending applications and balances the interest of the applicant against the workload resulting from the processing of broad or voluminous applications, which can influence the equal treatment of all existing applications, but also avoids more lengthy postponements of registration as is the case for alternative measures, considered reasonable by your institution¹³, that seek to uphold fairness amongst all applicants.

Only in exceptional circumstances that require a fair solution, irrespective of who the applicants are or why they seek access, does Frontex make proposals for the further processing of applications for the consideration of applicants. Contrary to your observation, there is no assumption that the practice aims to allow for the processing of applications outside the statutory time-limit. Instead, this cooperation between Frontex and applicants allows for the possibility to proceed with launching time-limits within a shorter time period than may be possible under alternative measures to ensure that all applicants are treated fairly and equally, e.g. under a ‘queuing mechanism’. While Frontex also considers placing applications in a ‘queue’ to safeguard all applicants’ equal treatment, immediate partial registration agreed upon together with applicants, instantly triggers statutory timelines and thereby speeds up the processing of at least parts of PAD applications. While solutions enabling the registration of remaining parts are developed together with applicants in parallel to or immediately following the conclusion of pending, partially registered applications, Frontex’s practice at any rate ensures that applications, which partially contain broad or voluminous elements in addition to parts not pertaining to lengthy or large numbers of documents, are no longer delayed wholly, thereby minimising delays and facilitating swifter PAD decisions. Frontex would welcome your guidance in regard to your examples in footnote 12 of paragraph 12 of your letter exemplifying “several methods/tools for addressing situations that create a significant workload” and how our current practices are not in line with these.

Finally, Frontex would like to highlight that it actively assists applicants throughout the mutual effort of finding a fair solution as recommended by the European Ombudsman. In addition to inviting applicants to suggest their preferred way forward while at the same time proposing multiple possible solutions, including suggestions to register all those parts of an application that can be individually and concretely assessed within the time-limits, Frontex also indicates similar documents which are publicly available in its [Public Register of Documents](#)¹⁴ and [Public Access to Documents Registry](#). All potential applicants are able to consult Frontex’s [Manual](#) on public access to documents created upon the request of the

¹¹ Judgment of 6 December 2012 in case T-167/10, *Evropaïki Dynamiki v Commission*, para. 78

¹² In accordance with Article 7(3)/Article 8(2) of Regulation (EC) No 1049/2001.

¹³ Decision in case 1608/2017/MIG on the European Medicines Agency’s handling of multiple requests for public access to documents made by a single applicant and its extension of deadlines.

¹⁴ To date, 946 documents disclosed through the framework of Regulation (EC) 1049/2001 have been uploaded to this register, with such and further documents added on a rolling basis.

European Ombudsman, enabling them to understand the statutory requirements that Frontex must adhere to during the processing of applications.

2. Issue of suspending statutory time-limits

Frontex's comprehensive approach for each application resulted in only 14 out of the 469 total applications received in 2022 requiring such suspensions after registration. We nevertheless welcome your raising this point from a legal-dogmatic perspective and would like to highlight, as also noted in our intermediary replies to you and in your letter¹⁵ of 30 May 2023, that Article 6(1) of Regulation (EC) No 1049/2001 requires that "[a]pplications for access to a document shall be made [...] in a sufficiently precise manner to enable the institution to identify the document". It follows from this article that the handling of an application and ultimately access to documents is conditional upon filing a sufficiently precise request, and it is for the applicant to identify the 'precise' document he or she wishes to obtain¹⁶. Precision is thus a pre-requisite for the handling of PAD applications and the time-limits¹⁷ are only applicable once the application is sufficiently clear and precise to enable Frontex to ascertain the documents requested.

Temporarily putting on hold the time-limits of an insufficiently precise application following its premature registration thus exclusively serves the purpose of obtaining clarifications from the applicant without which the application would not be processable. Frontex believes that the alternative of discontinuing the processing of applications or rejecting applications altogether due to a lack of clarity or precision, is an obstacle to openness and the fair treatment of applicants. Frontex's approach instead ultimately ensures that the widest possible access to documents can be provided. Frontex strives to avoid making multiple clarification requests to applicants and in each case tries to identify imprecisions as early and comprehensively as possible.

As acknowledged in your letter¹⁸ of 30 May 2023, Regulation (EC) 1049/2001 permits extending the initial time-limit for addressing "administrative difficulties", such as consulting applicants on the preciseness of applications when these do not enable an identification of the documents forming part of the application. The time taken to register applications after acknowledging their receipt can thus not entirely be based on the need to seek precision of the application at hand, as alluded to in your letter¹⁹, but rather could also incorporate further efforts to tackle administrative difficulties that hinder the obligation to provide the widest possible access to documents, e.g. finding a mutually agreeable fair solution.

Along with assisting applicants in clarifying requests that are insufficiently precise to enable the identification of documents, *inter alia*, by offering explanatory phone conversations between applicants and Frontex or by indicating documents which are publicly available as outlined above, Frontex continues to take account²⁰ of additional clarifications made by applicants in the course of the process and recognises²¹ that the wording of Article 6(2) of Regulation (EC) No 1049/2001 implies that applicants have a right to clarify applications. This is another element, which is clearly in the interest of applicants.

We read with great interest your recommendation to apply the European Commission's practice of asking applicants to provide the necessary clarifications, and to re-register this case and thus to activate the time-limit once such clarifications have been received, in cases where applications are registered that are not sufficiently precise to enable the identification of documents. While Frontex is committed to granting the widest possible access to documents without delay and aims to avoid the premature registration of applications by ensuring a swift and close cooperation among involved internal entities

¹⁵ Paragraph 3

¹⁶ Cf. Opinion of Advocate General Bobek delivered on 21 September 2016 on Case C-491/15 P, para. 37.

¹⁷ Provided for in Article 7 and Article 8 of Regulation (EC) No 1049/2001.

¹⁸ Paragraph 26

¹⁹ Paragraph 30

²⁰ Cf. Judgment of 22 May 2022 in Case T-300/10, *Internationaler Hilfsfonds eV v European Commission*, para. 84.

²¹ Cf. only European Ombudsman Recommendation on the European Commission's refusal to grant public access to documents concerning compliance with biofuels sustainability criteria under the Renewable Energy Directive (case 1527/2020/DL)

including as part of particularly complex applications, correcting the premature registration by restarting the process once the necessary clarifications are received also poses risks, which may be summarized as: (i) What is the character of the “closed” application, i.e. may it be considered as withdrawn and which remedies are open to applicants in such instances and (ii) would, based on your emphasis on the avoidance of delays, such re-registration not result in further delays as opposed to reinstating already commenced timelines, which Frontex does; and (iii) to explain how your recommendation to rapidly ask “the requester to provide the necessary clarifications, and to activate the time-limit once such clarifications have been received” can be reconciled with the time-limits as it necessitates the cooperation of the applicant - in short, there is a lack of legal certainty if the applicant does not cooperate and insists that the application is sufficiently precise as then the initial application would have to be revived with the effect that the time-limit to appeal to the European Ombudsman or the CJEU could be infringed.

Concretely, it may not be reasonable to assume that restarting the entire application process upon realising that an imprecise application has mistakenly been registered can adequately ensure that the principle of legal certainty is upheld. Especially in complex cases involving various, diverse stakeholders, multiple clarification requests may exceptionally be required, which each would reset the foreseen timelines and thus infringe on applicants’ possibility to avail themselves of legal remedies. In contrast, while Frontex’s practice can in extraordinary circumstances lead to a temporary halting of established timelines, as soon as the necessary clarifications to enable the identification and subsequent appraisal of the documents requested by applicants are obtained, the statutory timelines are triggered and/or reinstated. This temporary putting on hold of timelines can thus minimise delays when imprecise applications were prematurely, and mistakenly, registered and aims to provide the widest and timeliest possible access to documents. While Frontex continues to do its utmost to ensure a swift comprehensive analysis regarding the level of precision of received applications to avoid premature registration, Frontex’s approach is ultimately in the interest of applicants.

3. Conclusion

- ➔ Frontex believes that its current practices of 1) finding fair solutions in mutual agreement with applicants prior to the registration of PAD applications and 2) seeking necessary clarifications for insufficiently precise applications exceptionally following registration of such applications are compliant with Regulation (EC) No 1049/2001 and serve the interests of applicants by ensuring the widest possible public access to documents.
- ➔ Frontex has taken note of and will continue to consider applying the European Commission’s practice to re-register imprecise applications following their pre-mature registration. To this end, open questions remain particularly in regard to the overall fairness, efficacy and legal certainty of such an approach and Frontex would welcome receiving your clarifications on the identified risks above. While Frontex is unable to recognise the grounds for your claim that its practices involve not applying statutory deadlines at all, it would also welcome further clarifications in this regard.