

Your ref. 652/2023/VB

Ms Emily O'Reilly
European Ombudsman

Subject: Frontex's reply to the proposal for a solution in the case 652/2023/VB on the European Border and Coast Guard Agency's (Frontex) refusal to give public access to a report by its Fundamental Rights Officer concerning a Frontex operation in Albania (TO/PAD-2023-00050 and DCGO/TO/PAD-2023-00095)

Dear Mrs O'Reilly,

With reference to your letter of 16 June 2023 and the complaint 652/2023/VB, I am pleased to inform you that providing partial access to the document at issue is possible in this case. Having thoroughly reviewed your proposal, please find the document herewith attached for your kind reference and release to the applicant.

Frontex is strongly committed to giving the fullest possible effect to the fundamental right of access to documents as laid down in Regulation (EC) No 1049/2001¹ and I thus welcome your assessment that most of the information that had been redacted in the document provided to your staff is covered by the invoked exceptions.

Further to the reassessment of the document, and as explained to the complainant in Decisions PAD-2023-00050 and PAD-2023-00095, certain elements of the document have to be redacted pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, as they contain personal data, and/or characteristic features which could lead to the identification of individuals. Additionally, as elaborated in our intermediary reply to you, information which would foreseeably undermine the protection of the public interest as regards public security cannot be disclosed pursuant to Article 4(1)(a) first indent of Regulation (EC) No 1049/2001, specifically information relating to:

- the number and profiles of officers deployed;
- the modus operandi of law enforcement;
- details of the operational area;
- the reporting tools and methods used by law enforcement officials to conduct border control tasks and counter criminal activities;
- a joint operation, whose evaluation phase is ongoing;
- the means of communication used by law enforcement officials;

Moreover, access to limited parts of the document must be refused pursuant to Article 4(2) third indent of Regulation (EC) No 1049/2001, as disclosure would undermine the protection of the purpose of investigations.

With regard to your proposal to remove selected redactions pertaining to the protection of international relations under Article 4(1)(a) third indent of Regulation (EC) No 1049/2001, Frontex was able to reduce redactions invoking this mandatory exception following a reassessment of the factual situation. Certain elements in the document at issue, nevertheless, directly refer to the actions and procedures followed

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).

by the Albanian authorities in the context of the joint operation. As established in your letter, it is reasonable to refuse access to elements that refer to such actions and procedures as a unilateral disclosure would hamper the cooperation between this country and Frontex.

Frontex also reconsidered its application of Article 4(1)(a) third indent of Regulation (EC) No 1049/2001 to information related to cooperation with international organisations. Access to this particular part cannot be provided as such would jeopardise the mutual trust of all parties, which is an essential prerequisite for establishing international relations and ensuring the effectiveness of engagement in this regard. Frontex proactively communicates on its activities and general forms of cooperation with national Ombudspersons, UNHCR and IOM through publicly available reports. However, the information presently in question pertains to a specific geographical location as well as a precise date and operational context. Establishing and protecting a sphere of mutual trust in the context of international relations is a very delicate exercise and once the relationship between Frontex and an international organisation is impaired, there would be an ascertainable likelihood that these and other actors would no longer share sensitive data with Frontex.

Frontex agrees to share the information contained in your solution proposal as well as in this reply with the complainant.

I remain at your disposal for any further information.

Yours sincerely,

Electronically signed

Hans Leijtens
Executive Director

Annex - FROM report-652-2023-VB (partial disclosure)