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European Ombudsman

Mr Ilkka Laitinen
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Strasbourg, **09-08-2013**

OI/13/2012/MHZ

Dear Mr Laitinen,

On 21 June 2013, I received Frontex's reply to my request for further clarifications dated 7 May 2013, concerning two of my suggestions made in the Report following my visit to Frontex. I am grateful for your prompt reply.

After having analysed all Frontex's replies so far, I am satisfied by its response to all my suggestions except suggestion e). In addition, I consider that Frontex could take a more detailed approach to point (ii) of suggestion b).

I would thus like to offer Frontex an additional opportunity to consider its position as regards those two matters.

Suggestion e) concerning availability of the homepage of Frontex's website in all EU official languages/explanation of Frontex's language policy

In my Report on my visit to Frontex, I suggested that *"Frontex could consider making available in all 23 EU official languages, at least the homepage of its website, as well as information concerning its functions and language policy."*

In its first reply dated 24 February 2013, Frontex referred to the languages of a number of its publications and of a *"basic movie about the agency"*. In its subsequent reply to my straightforward suggestion concerning the linguistic availability of only the **homepage** of Frontex's website and not *"the entire content of the Frontex website"*, Frontex only referred to the possible translation costs for the whole website and not for the homepage.

In my understanding, however, since much less information is provided on the homepage in comparison to the quantity of information provided on other webpages, the costs of the translation of the information on the homepage could reasonably be expected to be less than the amount indicated by Frontex in



its reply to me. I also recall that a homepage is the main page providing information about an organisation and is distinct from other pages about that organisation. As I explained to Frontex in my further letter to it, the role of the homepage is to welcome all EU citizens in their own languages and indicate to them which sections or documents are available in all EU languages and which, on the other hand, may only be consulted in selected languages. This selection of languages could, in addition, be explained in terms of Frontex's language policy on the homepage, thus enabling citizens to understand, if necessary, the reasons why particular documents are available only in certain languages. Finally, I underline that many agencies, referred to in my letter to Frontex dated 7 May 2013, have already decided to make their homepages available in all EU languages.

In light of the foregoing I would be grateful if Frontex could review its stance and consider making available in all EU official languages AT LEAST the information provided on the homepage of its website.

Point (ii) of suggestion b) concerning publication of the rules applicable to requests for access to documents and requests for information

In my Report, I suggested that Frontex could include, on the homepage of its new website, the rules applicable to such requests. Frontex replied that, after having finalised contractual negotiations, it is about to "*modernise the information architecture of its website.*" This will open up the possibility of publishing information online on, among others, the rules applicable to such requests.

I understand from Frontex's reply, that it will publish on its website its rules on access to its documents, namely the Decision on public access¹. In my view, even the prospect of publishing the Decision on public access could provide an opportunity to modify that decision in order to ensure the full implementation of the provisions of Regulation 1049/2001² at Frontex.

First, Article 4 of the Decision on public access could be modified to make it clear what Frontex understands by the reference to "*the necessity not to jeopardise the attainment of objectives and tasks of Frontex*" at the end of that Article, which provides as follows "*When an EU Member State handles a request for access to documents originating from Frontex any consultation by the Member State shall be addressed to Frontex with a view to assessing whether pursuant to the applicable rules, the documents should or should not be disclosed, in particular taking into account the necessity not to jeopardise the attainment of objectives and tasks of Frontex.*"³

¹ Decision of the Management Board of 21 September 2006 laying down practical arrangement regarding public access to the documents of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

² Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.

³ On 22 October 2012, Statewatch lodged with the European Ombudsman a complaint against Frontex (complaint 2167/2012/BEH) concerning Frontex's rules and practices relating to access to documents. On 10 December 2012, I closed that case on the ground that the issues raised in the Statewatch complaint



Second, the Decision on public access does not implement Article 8(3) of Regulation 1049/2001 by expressly stating that the applicant has a right to make a complaint to the European Ombudsman or to institute court proceedings against the institution before the Court of Justice of the European Union (see also Article 28(5) of the Frontex Regulation⁴), if a confirmatory appeal is rejected. Article 7(2) of the Decision on public access simply provides that *"Frontex will inform the applicant of the remedies open to him or her"*.

Third, Article 15 of the Decision on public access provides that the *"Frontex Annual Report shall include the number of cases in which it refused to grant access to documents and the reasons for such refusals."* However, Article 17 of Regulation 1049/2001 provides, in addition, that the Annual Report shall also include the number of sensitive documents not recorded in the public register.

Finally, the Decision on public access does not include a provision implementing Article 11 of Regulation 1049/2001 concerning the obligation to maintain a public register of documents and, further, that references to documents shall be recorded in the register without delay.

In light of the foregoing, I would be grateful if Frontex could consider modifying the Decision on public access before its publication on the new Frontex website. This is in order to ensure that Frontex fully implements the provisions of Regulation 1049/2001 as indicated above.

I would be grateful to receive a further reply from Frontex concerning the above two matters by 15 September 2013. Please feel free to contact the responsible person in my services to discuss the matters, if you feel it would be useful to do so: Ms Marta Hirsch-Ziembinska, tel. +33 (0) 3 88 17 27 46, e-mail. marta.hirsch-ziembinska@ombudsman.europa.eu.

Yours sincerely,

P. Nikiforos Diamandouros

were covered by the visit and would be more effectively dealt with by the present own-initiative inquiry. In the closing letter, I informed Statewatch that I would give it an opportunity to comment on Frontex's replies made in the framework of the visit. Frontex was informed accordingly on 10 December 2012. In its observations on Frontex's reply to the Report, Statewatch took the view that in Article 4 of the Decision on public access (and in Recital 6) Frontex *"seeks to claim a status equivalent to that of a Member State as if it has interests independent of the EU and its Member States which set it up."* Those observations are attached to this letter.

⁴ Council Regulation 2007/2004 of 26 October 2004 establishing the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.



Enclosure:

- Statewatch observations dated 24 June 2013