

Ms Ute Gerbershagen

Email: [ask+request-6268-0600db6f@asktheeu.org](mailto:ask+request-6268-0600db6f@asktheeu.org)

Our ref: TO/CMS-2019-00001-0440

Please quote when replying.

Warsaw, 1 FEBRUARY 2019

## Your application for access to Frontex documents

Dear Ms Gerbershagen,

In response to your application registered on 18 January 2018, asking for access to

*data on variables "type of intercepted by" and "type of detected by" for (terminated)  
Operation Triton incidents from 10/13/2017 (incident report #218101) to 31/01/2018  
(incident report #229987),*

I regret to inform you that access to the requested documents must be refused pursuant to Articles 4(1)(a) and 4(3) of Regulation (EC) No 1049/2001<sup>1</sup> as their disclosure would undermine the protection of the public interest as regards public security and severely undermine Frontex's decision-making process based on the following:

The variables contained in the documents relating to the *"type of intercepted by"* cannot be released as their release would hamper the effectiveness of Frontex operations and jeopardise the efforts carried out by the European Union and Member States to curtail criminal activities at the external borders and also put the life of migrants in danger. Thus, the disclosure of those variables would undermine the protection of the public interest as regards public security as laid down in Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.

Furthermore, the variables contained in the documents pertain to information that is crucial for situational awareness at the external borders of the EU which is used for risk analysis and, in turn, Frontex's operational decision-making. As risk analysis used by Frontex to conduct its operations is based on the information at issue, disclosing the variables and the information contained therein would benefit the smuggling and other organized criminal networks, including terrorist organisations, who would change their modus operandi accordingly. Simultaneously, this would diminish the effectiveness of Frontex internal analysis. As no overriding public interest that is objective and general in nature and not indistinguishable from individual or private interests for the release of these documents is ascertainable in the present case, these documents cannot be released based on Article 4(3) of Regulation (EC) No 1049/2001.

The variables contained in the documents relating to the *"type of detected by"* contain information regarding the technical equipment deployed in each operational area. Disclosing such information would be tantamount to disclosing the exact type, capabilities and weaknesses of the equipment, as well as their usual position, opening way for abuse. In this light, disclosure of such information would undermine

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<sup>1</sup> 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).

the protection of the public interest as regards public security in the sense of Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.

A partial release of the documents could not be undertaken, as the redacting would be disproportional in relation to the parts that are eligible for disclosure, simultaneously undermining the principle of sound administration. More specifically, the administrative burden necessary to identify and redact the releasable materials would be disproportionate to the public interest in the disclosure exercise itself, while the released documents would not convey any informative value due to their significantly reduced form. Consequently, a partial disclosure of the documents at issue must be refused owing to the particular circumstances of the present case.

Yours sincerely,

**signed**

Hervé Caniard  
*Head of Transparency Office*

Pursuant to Article 7(2) of Regulation (EC) No 1049/2001, within 15 working days of the receipt of this letter, you may submit a confirmatory application to Frontex to reconsider its position. Based on Article 8 of Regulation (EC) No 1049/2001, Frontex will reply to you within 15 working days from the registration of such application. You can submit your confirmatory application by post or electronically.