

Mr Giulio Occhiuto

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Our ref: DCGO/TO/CMS-2019-00005-0438
Initial application: TO/CMS-2019-00004-0728

Warsaw, 6 June 2019

Your application for access to Frontex documents - confirmatory application

Dear Mr Occhiuto,

In reference to your confirmatory application registered on 17 May 2019 in which you confirmed your initial application registered on 25 April 2019, to which Frontex had replied on 14 May 2019 where you applied for access to

The Themis 2018 Operational Plan including the Main Part, all annexes and the Handbook of the operation.

I note your arguments in your confirmatory application

In your reply refusing my request, you outlined that Themis op. 2018 is concluded, but the evaluation phase is ongoing and that disclosure of the op. plan documents I asked for may hamper this phase and jeopardize the EU's and MS's activities. Though it's not clear how this could happen.

Your usual behaviour in transparency matters allows the access to documents for operations concluded, also when the same operation is refinanced for the next year. A different way may unjustifiably avoid the access to documents for many years in the case that the same operation is reconfirmed for many years.

In addition, the evaluation phase cannot entail changes in the documents related to the op. plan I asked for.

Finally, pursuant article 4, par. 6, of regulation (EC) 1049/2001 "If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released". You usually provide partial access to document pursuant article 4, par. 6, of the cited regulation in similar requests. The rejection of my application, in this vein, may result discriminatory.

With regard to the first part of your argument in which you question how disclosing the Operational Plan - including the annexes and the Handbook (hereinafter all subsumed comprised in the term "Operational Plan") - would hamper the currently ongoing evaluation, I would like to stress that Frontex always conducts a case by case analysis of the documents at stake taking into consideration all factors

prevailing at the application date. Also I need to state that security concerns are, due to their very nature, subject to change, simultaneously causing Frontex to constantly evaluate its practice in order to ensure an efficient performance of its mandate. In this regard, please be informed that the currently ongoing evaluation of JO Themis 2018 is part of the conclusion procedure of this Operation and forms an integral part for the adjustment of the currently ongoing JO Themis 2019, which covers similar geographical areas as its predecessor. More specifically, as the currently ongoing successor to JO Themis 2018 is readjusted based on the data collected from the previous venture, the release of the Operational Plan for JO Themis 2018 would provide insights into the strengths and weaknesses also of the currently ongoing successor. This information would enable terrorist organizations and criminal networks to change their modus operandi and consequently result in hampering the course of the ongoing and future similar operations, which would jeopardise the effective control and surveillance of the European Union's external sea borders and would put the life of migrants in danger. Consequently, releasing the Operational Plans of JO Themis 2018 at this stage would ultimately 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 1049/2001¹.

Furthermore, the ongoing decision-making process in regard to currently ongoing and future similar operations, which is based on this evaluation of JO Themis 2018, would be seriously undermined as stakeholders' positions regarding the evaluation would be revealed. 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, the release of the Operational Plan must be refused based on Article 4(3) of Regulation (EC) No 1049/2001.

Reiterating the statements made at the beginning and also in reference to the second part of your argument, not being able to grant you access to the Operational Plan of JO Themis 2018 at this stage based on Article 4(1)(a) first indent and (3) of Regulation (EC) No 1049/2001 does not contradict Frontex "usual behaviour in transparency matters" as Frontex takes a holistic approach and evaluates all factors present at the reception of initial and confirmatory applications, including documents released up to the respective application dates and security concerns prevailing at these dates. On the basis of this impartial examination, the decision on the release of documents is made.

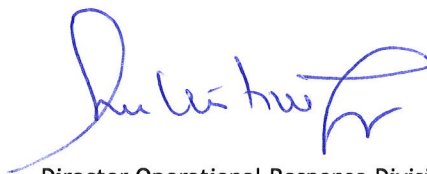
As regards the final part of your argument and your accusation of a discriminatory action in terms of a possibility of a partial disclosure enshrined in Article 4(6) of Regulation (EC) No 1049/2001, please note that the Agency, in its service to the public, is obliged to adhere to principles of transparency as well as to the principle of sound administration. Owing to the special circumstances of the case and sensitivity of the requested materials, it was deemed that the release of short, fragmented parts of the Operational Plan would not be in line with the latter principle. More specifically, the administrative burden necessary to identify and redact the releasable parts would be disproportionate to the public interest in the disclosure exercise itself, while the released document would not convey any informative value due to its significantly reduced form. For this reason, partial access to the documents you applied for cannot be granted.

¹ 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 (OJ L 145, 31.5.2001, p. 43).

Consequently, I concur with the decision following your initial application regarding the refusal of a partial release and the reasoning provided therein.

In accordance with Article 8(1) of Regulation (EC) No 1049/2001,² you are entitled to institute court proceedings and/or make a complaint to the European Ombudsman under the relevant provisions of the Treaty on the Functioning of the European Union.

Yours sincerely,



Director Operational Response Division

² 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).

