



**P. Nikiforos Diamandouros**  
European Ombudsman

Mr Tony Bunyan  
Statewatch  
PO Box 1516  
LONDON N16 0EW  
ROYAUME UNI

office@statewatch.org

Strasbourg, **19 -11- 2012**

Complaint 2167/2012/BEH

Dear Mr Bunyan,

On 22 October 2012, you submitted a complaint to the European Ombudsman against Frontex concerning its rules on access to documents.

I have asked Frontex to submit an opinion on the following allegations and claim.

**Allegations:**

**1.** Frontex's Management Board decision adopting practical arrangements regarding public access to Frontex documents is not in line with Regulation 1049/2001.

In support of this allegation, you argue that:

(i) Frontex seeks to claim a status equivalent to that of a Member State as if it had interests independent of the EU and its Member States. Thus, according to Article 4 of the Management Board Decision, a decision to grant access must take into account "the necessity not to jeopardise the attainment of objectives and tasks of Frontex";

(ii) Article 7(2) of the Management Board Decision provides that, where access is refused, the applicant will be informed of "the remedies open to him or her", without however explicitly mentioning the right to institute court proceedings or to turn to the Ombudsman;

(iii) Unlike Regulation 1049/2001, the Management Board Decision does not provide for a requirement to maintain a public register and to record documents in that register without delay; and



(iv) The Management Board Decision provides that Frontex's annual report shall include the number of cases in which it refused to grant access and the reasons for such refusals. However, unlike in Article 17 of Regulation 1049/2001, there is no requirement to record the number of sensitive documents not recorded in the register.

**2.** Contrary to Article 11 of Regulation 1049/2001, which applies to Frontex by virtue of Article 28(1) of Council Regulation 2007/2004 and of Article 15 TFEU, Frontex has failed to provide a public register of documents created and held by it.

**3.** Contrary to Article 17 of Regulation 1049/2001, Frontex has failed to provide information on the number of documents to which access has been refused, the reasons for such refusals and the number of sensitive documents not recorded in the register.

**Claim:**

Frontex should bring its rules and practice into line with the requirements of Regulation 1049/2001.

In accordance with Articles 2(2) and 3(1) of the Statute of the European Ombudsman, I informed the Executive Director of Frontex of your complaint and invited him to submit an opinion on the allegations and claims included in my inquiry by 28 February 2013.

As soon as I receive Frontex's opinion, I will forward it to you with an invitation to make observations. Any observations you wish to make should be submitted to my office within one month of receiving the opinion.

Once my office receives your observations, or the deadline has passed, the Legal Officer responsible for your case, Mr Bernhard Hofstötter (+33 388 17 81 05), will then examine your file. Mr Hofstötter is the acting Head of Complaints and Inquiries Unit 4, which is part of Directorate B. I will inform you if I need to inquire further into your complaint before making a decision on it.

Every effort is made to deal with cases as quickly as possible. I try to reach a preliminary conclusion in an inquiry on a complaint within one year of opening it.

Yours sincerely,

P. Nikiforos Diamandouros