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## 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)

### THE MANAGEMENT BOARD

Having regard to the Regulation (EC) No. 2007/2004 of the Council of 26 October 2004 establishing a European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union, hereinafter referred to as "the FRONTEX Regulation", and in particular to Article 28 thereof,

Whereas:

- (1) The second subparagraph of Article 1 of the Treaty on European Union (hereinafter referred to as "the EU Treaty") enshrines the concept of openness, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.
- (2) Openness enables the administration to enjoy greater legitimacy and to be more effective and more accountable. Openness contributes to strengthening the principles of democracy and respect for fundamental rights as laid down in Article 6 of the EU Treaty, in Article 255 of the Treaty establishing the European Community (hereinafter referred to as "the EC Treaty") and in Article 42 of the Charter of Fundamental Rights of the European Union.
- (3) Regulation (EC) No 1049/2001 of 30 May 2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (hereinafter referred to as "Regulation 1049/2001") lays down the general principles and limits governing the right of access to European Parliament, Council and Commission documents.
- (4) In accordance with Article 28 of the FRONTEX Regulation, FRONTEX shall be subject to Regulation (EC) No 1049/2001 when handling applications for access to documents held by it.
- (5) In principle, all documents should be accessible to the public. However, certain public and private interests should be protected, where necessary, and, in particular, the protection of personal data should be taken into account.
- (6) In order to safeguard the ability to carry out its tasks, special attention should be paid to the specific requirements of FRONTEX as a specialised expert body tasked with improving the



integrated management of the external borders of the Member States of the European Union. Therefore, full account of the sensitive nature of tasks carried out by FRONTEX, in particular in relation to operations at borders and border related data should be taken. In any case, the successful and effective fulfilling of FRONTEX objectives and tasks as foreseen in the FRONTEX Regulation should not be jeopardised.

HAS ADOPTED THIS DECISION:

*Article 1*

**Purpose**

The purpose of this decision is to lay down the practical arrangements for the application of Regulation (EC) No 1049/2001 as regards the documents of FRONTEX.

*Article 2*

**Definitions**

For the purpose of this decision:

- (a) "FRONTEX document" or "document" shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within FRONTEX sphere of responsibility;
- (b) "third party" shall mean any natural or legal person, or any entity other than FRONTEX, including the EU Member States, other institutions, bodies and agencies of the EU, international organisations and third countries.

*Article 3*

**Exceptions to public access**

When assessing the requests for FRONTEX documents, FRONTEX shall apply the provisions of Article 4 of the Regulation (EC) No 1049/2001.

*Article 4*

**FRONTEX documents in the EU Member States**

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. FRONTEX shall reply without undue delay.

The Member States may instead refer the request to FRONTEX.

*Article 5*



## **Applications**

1. Applications for access to a document shall be made in any written form, including electronic form, in one of the languages referred to in Article 314 of the EC Treaty and in a sufficiently precise manner to enable FRONTEX to identify the document. They should be addressed to FRONTEX or to the electronic address provided on the FRONTEX website on the Internet or be filled in the electronic form provided on this website. The applicant is not obliged to state reasons for the application.
2. If an application is not sufficiently precise, FRONTEX shall invite the applicant to provide additional information making it possible to identify the documents requested; the time limit for reply as referred to in Article 6 shall run only from the time when FRONTEX has received this information.
3. In the event of an application relating to a very long document or to a very large number of documents, FRONTEX may confer with the applicant, with a view to finding a fair solution.
4. FRONTEX shall provide information and assistance to citizens on how and where applications for access to documents can be made.

## *Article 6*

### **Processing of initial applications**

1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant, unless the answer can be sent by return post. The acknowledgement of receipt and the answer shall be sent in writing, where appropriate, by electronic means.
2. Within 15 working days from registration of the application, FRONTEX shall either grant access to the document requested in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with paragraph 3 of this Article.
3. In the event of a total or partial refusal, the applicant may, within 15 working days of receiving FRONTEX reply, make a confirmatory application to FRONTEX asking it to reconsider its position.
4. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 2 may be extended by 15 working days, provided that the applicant receives reasoned notice in advance.
5. Failure by FRONTEX to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

## *Article 7*

### **Processing of confirmatory applications**

1. A confirmatory application shall be handled promptly. Within 15 working days from registration of such an application, FRONTEX shall either grant access to the document requested in accordance with Article 10 within that period or, in a written reply, state the reasons for the total or partial refusal.



2. The applicant shall be notified in writing of the decision, where appropriate by electronic means. FRONTEX will inform the applicant of the remedies open to him or her.

3. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant receives reasoned notice in advance.

4. Failure by FRONTEX to reply within the prescribed time limit shall be considered as a negative reply.

#### *Article 8*

#### **Consultations**

1. When FRONTEX receives an initial or confirmatory application for access to a document which it holds but which originates from a third party, FRONTEX shall consult the third party author unless it is clear that the document shall or shall not be disclosed, respecting the provisions of Article 4 of the Regulation (EC) No 1049/2001.

2. If FRONTEX, in accordance with the Regulation (EC) No 1049/2001, has to give access to a document originating from a third party other than an EU Member State against the opinion of the third party concerned, it shall inform this third party accordingly before granting access.

#### *Article 9*

#### **Treatment of sensitive documents**

1. Sensitive documents are documents originating from the institutions or the agencies established by them, from EU Member States, third countries or International Organisations, classified as "TOP SECRET", "SECRET" or "CONFIDENTIAL" in accordance with the rules of the institution concerned, which protect essential interests of the European Union or of one or more of its Member States in the areas covered by Article 4(1)(a) of the Regulation (EC) No 1049/2001, notably public security, defence and military matters.

2. Applications for access to sensitive documents under the procedures laid down in Articles 7 and 8 shall be handled only by those persons who have a right to acquaint themselves with those documents.

3. Sensitive documents shall be recorded in a public register or released only with the consent of the originator.

4. If FRONTEX decides to refuse access to a sensitive document, it shall give the reasons for its decision in a manner which does not harm the interests protected in Article 4 Regulation (EC) No 1049/2001.

#### *Article 10*

#### **Access following an application**

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, where available in electronic form, according to the applicant's preference. The cost of producing and sending copies may be charged to the applicant. This charge shall not exceed



the real cost of producing and sending the copies. Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form shall be free of charge.

2. If a document has already been released by FRONTEX or the third party concerned and is easily accessible to the applicant, FRONTEX may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.

3. Documents shall be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) in accordance with the applicant's preference.

#### *Article 11*

#### **Information**

FRONTEX shall take the requisite measures to inform the public of the rights they enjoy under the Regulation (EC) No 1049/2001 and in accordance with this decision.

#### *Article 12*

#### **Right of access to personal data**

This decision shall be without prejudice to the right of individuals to have access to personal data concerning them, as stipulated in relevant Community legislation, such as the Regulation (EC) No. 45/2001 of the European Parliament and of the Council of 18 December 2000.

#### *Article 13*

#### **Reproduction of documents**

This decision shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.

#### *Article 15*

#### **Report**

FRONTEX shall include in its annual report the number of cases in which it refused to grant access to documents and the reasons for such refusals.

#### *Article 16*

#### **Entry into force**

This decision shall enter into force on the date of its adoption by the Management Board.

*Done at Warsaw, on 21 September 2006*  
*for the Management Board*

*M. A. Reuving*