

CM2111 Shortcomings in Frontex's practice on public access to documents SUMMARY

September 2021

Frontex's rapid growth, along with an increase in reports of wrongdoing at the EU's external borders, have spiked an interest in the agency's activities and led to a significant increase in access to documents requests under Regulation 1049/2001. This presents a genuine challenge to Frontex, who have already made valuable steps towards improving its framework and procedures for accessing documents. Yet, notable shortcomings remain in its practice regarding Regulation 1049/2001. It is particularly urgent to remedy those shortcomings given that Frontex operates in a highly fundamental rights-sensitive area, and mechanisms to hold it accountable are scarce. In this light, the Meijers Committee offers the following recommendations for reforming Frontex's practices:

Proactive disclosure

- Fill the document register with more existing documents held by Frontex. Beyond documents that are fully and publicly accessible, this should minimally include references to those documents or types of documents to which access is not granted through the register.
- Make Frontex's annual report on public access to documents easy to find on the Frontex website.

Passive access

- Keep channels of communication open with persons that request access to documents, even once the case is formally closed.
- Allow third-country nationals to lodge public access requests to documents with the agency. Ensure they are aware of the existence of this right.
- Include detailed statistics in Frontex's annual report on public access to documents, including data concerning the frequency of application of each exception to access, the average handling times, and the percentage of requests exceeding statutory deadlines.
- Include statistics on third-country applicants, the rate of successful appeals, and reasons for refusal to grant access in Frontex's annual report on public access to documents.

Access to justice

- Refrain from presenting litigants in public access to documents cases with legal costs that may be considered arbitrary or excessive.
- When deciding upon the recovery of legal costs, take into account the interests pursued by access litigants, as well as their legal status and financial situation.
- When deciding upon costs, the Court may consider interpreting its own Rules of Procedure in light of Article 47 CFR, taking into greater account factors like an applicant's means and interests.