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European Ombudsman

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Strasbourg, **26 -09- 2013**

Complaint 2167/2012/BEH and OI/13/2012/MHZ

Dear Mr Bunyan,

Please find enclosed a copy of my decision closing my own-initiative inquiry OII/13/2012/MHZ concerning the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex).

I thank you for your contributions to that case.

Yours sincerely,

P. Nikiforos Diamandouros

Enclosure: 1



## Decision

of the European Ombudsman closing own initiative inquiry OII/13/2012/MHZ (Visit to the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union - Frontex)

### The background to the inquiry

1. In May 2011, the European Ombudsman initiated a programme of visits to the EU agencies with the aim of identifying and spreading best practices in their relations with citizens. By letter of 12 September 2012, the Ombudsman informed Frontex<sup>1</sup> that it was to be included in the programme of visits. The

<sup>1</sup> Frontex was established by Council Regulation 2007/2004 of 26 October 2004 establishing the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union ('Frontex Regulation') OJ 2004 L 349, p. 1. This regulation was subsequently amended in 2007 by Regulation 863/2007 establishing a mechanism for the creation of Rapid Border Intervention Teams OJ 2007 L 199, p. 30. On 25 October 2011, further amendments to the Frontex Regulation were adopted, namely Regulation 1168/2011 of 25 October 2011 amending Council Regulation 2007/2004 OJ 2011 L 304, p. 1. In accordance with the Frontex Regulation, Frontex aims to facilitate the application of existing and future EU measures relating to the management of external borders by ensuring the coordination of Member States' actions in the implementation of those measures. In particular, it should: (i) assist Member States with implementing the operational aspects of external border management; (ii) carry out risk analyses in order to provide the EU and the Member States with adequate information to allow for appropriate measures to be taken or to tackle identified threats and risks with a view to improving the integrated management of external borders; (iii) provide training at EU level for officers of the competent national services and for national instructors of border guards and additional training and seminars related to control and surveillance at external borders and removal of third-country nationals illegally present in the Member States for officers of the competent national services; (iv) follow up on developments in scientific research relevant for its field and disseminate information to the Commission and to the Member States; (v) manage lists of technical equipment provided by the Member States; and (vi) support Member States in circumstances requiring increased technical and operational assistance at external borders. In addition, one of the new tasks defined by Regulation 1168/2011 is to *"provide the necessary assistance to the development and operation of a European border surveillance system and, as appropriate, to the development of a common information sharing environment, including interoperability of systems."*



Ombudsman sent Frontex a draft agenda with the specific issues he wished to discuss. In addition, the Ombudsman informed Frontex that, in response to a commitment he had undertaken following a request by the Assembly of Agency Staff Committees ('AASC'), he would also meet with Frontex's Staff Committee during his visit. The Ombudsman visited Frontex on 4 October 2012.

2. To avoid possible confusion it should be pointed out that another own-initiative inquiry concerning Frontex remains on-going and is not the subject of the present decision: OI/5/2012/BEH-MHZ. The Ombudsman envisages that the next step in that inquiry will be taken later in 2013.

## The subject matter of the inquiry

3. The meeting with Frontex management focused on the following issues: (i) Frontex's regulations on personal conduct and good administrative behaviour; (ii) the public service principles; (iii) transparency, dialogue and accountability (public access to documents); (iv) selection and recruitment; (v) conflicts of interest; (vi) whistle-blowing; and (vii) tenders and contracts.

4. At the end of the meeting, a copy of the presentation and supporting documents were provided to the Ombudsman<sup>2</sup>. Frontex asked for the confidential treatment of all internal documents submitted to the Ombudsman<sup>3</sup>, apart from the following decisions adopted by its Management Board:

-Decision No 23/2012 of 27 September 2012 adopting Frontex disciplinary procedure;

<sup>2</sup> Subsequently, Frontex sent the Ombudsman, by e-mail, PDF versions of PowerPoint presentations and internal documents.

<sup>3</sup> There were:

(a) templates of the: (i) Interview evaluation report; (ii) Overall screening report for a post; (iii) Screening report for a post; (iv) Declaration on compliance with the personal data protection provisions and declaration on independence and interest (for the selection committee); (v) Declaration on confidentiality and discretion; (vi) Declarations of interests; (vii) Declaration of absence of conflicts of interest and of confidentiality (for Opening Board and Evaluation Committee in tender procedures); (viii) letters informing candidates of the outcome of the selection procedure; and (ix) Acknowledgement of receipt-declaration on the Frontex Code of Conduct and Frontex Code of Good Administrative Behaviour;

(b) Administrative Notice No 36/2010 of 2 June 2010 'Understanding the concept of *Conflicts of Interest* in Frontex';

(c) Administrative Notice No 46/2010 of 18 November 2010 'Internal policy on the procedures applicable to the recruitment and selection of Temporary and Contract staff at Frontex' with enclosures;

(d) Decision of the Executive Director No 58/2009 of 19 November 2009 establishing the procedure governing the engagement and use of temporary staff;

(e) Document 'Reporting suspected improprieties' dated 18 January 2010, with enclosures;

(f) Decision of the Executive Director No 36/2008 of 8 September 2008 adopting implementing rules concerning data protection at Frontex; and

(g) copies of three answers from Frontex to public requests for access to documents.



-Decision No 017/2005 of 16 December 2005, on the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests; and

-Decision No 3402 of 22 September 2006 laying down practical arrangements regarding public access to the documents of FRONTEX.

5. After the meeting with Frontex's management, the Ombudsman met with the Staff Committee representatives.

## The inquiry

6. On 7 February 2013, the Ombudsman sent Frontex a Report which included a number of suggestions. He invited Frontex to reply to these suggestions by 31 May 2013. The Report is available on the Ombudsman's website.

7. Frontex replied to the Report on 24 February 2013. Its reply is also available on the Ombudsman's website. In addition, that reply was sent to Statewatch<sup>4</sup> with an invitation to submit observations. Statewatch did so on 21 June 2013.

8. On 7 May and 9 August 2013, the Ombudsman asked Frontex for additional information concerning three issues: (i) the availability of the homepage of Frontex's website in all EU official languages/explanation of Frontex's language policy; (ii) information to tenderers on the possibility of complaining to the Ombudsman; and (iii) the publication of the rules applicable to requests for access to documents and requests for information. Frontex replied on 21 June and 10 September 2013 respectively. The Ombudsman's letters and Frontex's replies were published on the Ombudsman's website. They were also sent to Statewatch which made observations.

## The Ombudsman's analysis and conclusions

### Preliminary remarks

9. The Ombudsman's Report on the visit to Frontex made a number of suggestions to which Frontex replied on 24 February 2013. Frontex completed its response on 21 June and 10 September 2013, following the Ombudsman's further questions. Frontex's replies are assessed below.

<sup>4</sup> On 22 October 2012, Statewatch lodged with the Ombudsman a complaint against Frontex (complaint 2167/2012/BEH) concerning Frontex's rules and practices relating to access to documents. On 10 December 2012, the Ombudsman closed that case on the ground that the issues raised in the Statewatch complaint were covered by the visit and would be more effectively dealt with by the present own-initiative inquiry. In the closing letter, the Ombudsman informed Statewatch that he will give it an opportunity to comment on Frontex's replies made in the framework of the visit. Frontex was informed accordingly on 10 December 2012.



**A.** The Ombudsman's suggestion that the homepage of Frontex's website could be made available in all EU languages, as well as information concerning Frontex's functions and language policy

#### **Frontex's stance**

**10.** In its reply to the Report, Frontex stated that it already publishes documents fundamental to its work-planning and annual reporting in all official EU languages on its website under the 'Governance Documents' section. Frontex is currently working on a new brochure explaining what it is and how it operates. If budgets allows, this publication will then be translated into more languages. Frontex will also work on subtitling an introductory movie about the Agency in a number of languages. Initially, these subtitles will be in Italian, Greek, Spanish, French, German and Polish. As a next step, in the medium-term once translation is done, "*new language subpages will be created on the website.*"

**11.** In its reply of 21 June 2013 to the Ombudsman's further question of 7 May 2013 concerning the suggestion, Frontex put forward that it fully recognises the need to have its website available in the official languages of the EU, other than English. Unfortunately, under the prevailing conditions of austerity within the EU, Frontex lacks human and financial resources to offer and maintain "*the entire content of the Frontex website*" in all EU languages. Frontex's website currently hosts over 3888 pages of material. The cost of translating this material into 23 languages<sup>5</sup> would amount to approximately EUR 8 million. Such an amount would make it virtually impossible for Frontex to adopt a fully multilingual approach. Nevertheless, Frontex is working on providing general information to those who do not understand English. In the first months of 2014, Frontex will develop a language policy for its website and will publish general information about its mandate and activities in French, German, Spanish, Italian and Greek.

**12.** In his subsequent request for further clarification, dated 9 August 2013, the Ombudsman pointed out that, in its replies so far, Frontex only referred to the possible translation costs for the whole website and not for the homepage. In the Ombudsman's understanding, however, since much less information is provided on the homepage in comparison to the quantity of information provided on other webpages, the costs of the translation of the information on the homepage could reasonably be expected to be less than the amount indicated by Frontex in its reply to the Ombudsman. He recalled in his letter to Frontex that a homepage is the main page providing information about an organisation and is distinct from other pages about that organisation. The role of the homepage is to welcome all EU citizens in their own languages and indicate to them which sections or documents are available in all EU languages and which, on the other hand, may only be consulted in selected languages. This selection of languages could, in addition, be explained in terms of Frontex's language policy on the homepage, thus enabling citizens to

<sup>5</sup> Frontex's reply was sent before Croatia's accession to the EU.



understand, if necessary, the reasons why particular documents are available only in certain languages. Finally, the Ombudsman underlined that many agencies (ENISA, EMA, Cedefop, CEPOL and EBA) have already decided to make their homepages available in all EU languages. In light of the foregoing, the Ombudsman asked Frontex to review its stance and consider making available in all EU official languages AT LEAST the information provided on the homepage of its website.

**13.** In its reply of 10 September 2013, Frontex reiterated that in the first months of 2014, it will make available on its website general information about the Agency in French, German, Spanish, Italian, Greek and Polish. It also added that it will make every effort to extend the list of languages to all 24 by the end of 2014.

#### **The Ombudsman's assessment**

**14.** The Ombudsman takes note of Frontex's assurances made in its letter of 10 September 2013, that, by the end of 2014, it will make every effort to make available general information about the Agency in all 24 languages. In the Ombudsman's understanding this information should normally be provided on the homepage. He considers, therefore, that his further inquiries are not necessary as regards suggestion A.

B. The Ombudsman's suggestion that specific information about (i) codes of good administrative behaviour; (ii) values and public service principles; and (iii) declarations of conflicts of interest should be published on Frontex's website

#### **Frontex's stance**

**15.** In the Report, the Ombudsman suggested that Frontex could make its commitment to the principles set out in the European Code of Good Administrative Behaviour (the 'Code') more visible to Union citizens by providing a link to the Code on its homepage. He underlined that the European Parliament adopted the Code in 2001 following the Ombudsman's proposal in this respect. The Code has provided guidelines to the EU administration ever since. The Code, drafted by the Ombudsman, constitutes a detailed interpretation of the right to good administration as provided for in Article 41 of the Charter of Fundamental Rights of the European Union.

**16.** In the Report, the Ombudsman also suggested that Frontex could make available on its website the document entitled Frontex Values and the Public Service Principles published by the Ombudsman in June 2012. In addition, declarations of conflicts of interest for the Executive Director and top management, once respective templates are drafted, should also be published. Finally, Frontex could develop specific templates of declarations of conflicts of interest for its seconded experts.

**17.** Frontex replied that "*after having finalised contractual negotiations, [it] is about to modernise the information architecture of its website.*" This will allow it to publish online (i) the new Frontex Staff Code of Conduct (Decision of Frontex Executive Director 2012/120 of 15 November 2012); (ii) Frontex Values and the Public



Service Principles published by the Ombudsman; and (iii) declarations of conflicts of interest for the Executive Director and the Deputy Executive Director. Frontex put forward that it had already developed the templates of declarations of conflicts of interest a few years ago and, since then, they have been in use.

**18.** Frontex also stated that it will use the existing template of declarations of conflicts of interest, which is now applicable to temporary agents and contractual staff, and also in respect of national experts seconded to Frontex.

#### **The Ombudsman's assessment**

**19.** The Ombudsman welcomes Frontex's positive reply. He trusts that the contractual negotiations on the new modification of Frontex's website will be finalised without delay. He also expects that the information specified in Frontex's reply to him, summarised in point 17 above, will be published on its website without delay. Finally, he trusts that on its new homepage Frontex will provide a link to the Code in order to direct the reader and thus facilitate public scrutiny of Frontex. The Ombudsman will make a further remark encouraging Frontex to do so.

#### **C. The Ombudsman's suggestions related to access to Frontex documents**

##### **Frontex's stance**

**20.** In the Report, the Ombudsman first suggested that Frontex could make arrangements to ensure that confirmatory applications for access to documents are not dealt with by the same persons as deal with the initial applications. In its reply to the Report, Frontex agreed to do so.

**21.** During the visit, Frontex announced that it would start operating a public register of its documents very soon. In the Report, the Ombudsman thus made a suggestion that this should be done without delay. In its reply to the Report, Frontex put forward that it has a medium-term plan to build a comprehensive document management system which would include a register. Frontex added that by the end of 2013 or the beginning of 2014, it would be ready with a temporary solution.

**22.** In his Report, the Ombudsman also suggested that Frontex could include, on the homepage of its new website, information about: (i) how to submit requests for access to documents and requests for information; (ii) the rules applicable to such requests and the responsible contact person; and, as promised, (iii) the citizens' right to complain to the Ombudsman. Frontex replied that, after having finalised contractual negotiations, it is about to "*modernise the information architecture of its website.*" This will open up the possibility of publishing information online on: (i) how to submit a request for access to documents pursuant to Regulation 1049/2001; (ii) the rules applicable to such requests; (iii) the contact details of the person responsible; and (iv) the fact that citizens have the right to complain to the Ombudsman in case of refusal of access to documents.



23. In his further letter to Frontex of 9 August 2013, the Ombudsman stated that he understands, from Frontex's reply to the Report, that it will publish on its website its rules on access to its documents, namely the Decision on public access<sup>6</sup>. He then expressed the view that, even the prospect of publishing the Decision on public access could provide an opportunity to modify that decision in order to ensure the full implementation of the provisions of Regulation 1049/2001<sup>7</sup> by Frontex. In this respect, he made the following remarks.

First, Article 4 of the Decision on public access, which provides as follows: "*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*", could be modified to make it clearer what Frontex understands by the reference to "*the necessity not to jeopardise the attainment of objectives and tasks of Frontex*" at the end of that Article<sup>8</sup>.

Second, the Decision on public access does not implement Article 8(3) of Regulation 1049/2001 by expressly stating that the applicant has a right to make a complaint to the Ombudsman or to initiate court proceedings against the institution before the Court of Justice of the European Union (see also Article 28(5) of the Frontex Regulation<sup>9</sup>), if a confirmatory appeal is rejected. Article 7(2) of the Decision on public access simply provides that "*Frontex will inform the applicant of the remedies open to him or her*".

Third, Article 15 of the Decision on public access provides that the "*Frontex Annual Report shall include the number of cases in which it refused to grant access to documents and the reasons for such refusals*." However, Article 17 of Regulation 1049/2001 provides, in addition, that the Annual Report shall also include the number of sensitive documents not recorded in the register.

Finally, the Decision on public access does not include a provision implementing Article 11 of Regulation 1049/2001 concerning the obligation to maintain a public register of documents and, further, that references to documents shall be recorded in the register without delay. In light of the

<sup>6</sup> 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).

<sup>7</sup> 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.

<sup>8</sup> On 22 October 2012, Statewatch lodged with the European Ombudsman a complaint against Frontex (complaint 2167/2012/BEH) concerning Frontex's rules and practices relating to access to documents. On 10 December 2012, I closed that case on the ground that the issues raised in the Statewatch complaint were covered by the visit and would be more effectively dealt with by the present own-initiative inquiry. In the closing letter, I informed Statewatch that I would give it an opportunity to comment on Frontex's replies made in the framework of the visit. Frontex was informed accordingly on 10 December 2012. In its observations on Frontex's reply to the Report, Statewatch took the view that in Article 4 of the Decision on public access (and in Recital 6) Frontex "*seeks to claim a status equivalent to that of a Member State as if it has interests independent of the EU and its Member States which set it up*." Those observations are attached to this letter.

<sup>9</sup> Council Regulation 2007/2004 of 26 October 2004 establishing the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.





foregoing, the Ombudsman asked Frontex to consider modifying the Decision on public access before its publication on the new Frontex website. This was done with an eye to ensuring that Frontex fully implements the provisions of Regulation 1049/2001 as indicated above.

**24.** In its reply of 10 September 2013, Frontex stated that the Decision on public access is currently being revised. Once this work is finalised, Frontex will put every effort into having it adopted as soon as possible in the coming meeting(s) of the Management Board, or earlier, if feasible, by written procedure. The Ombudsman forwarded Frontex's reply to Statewatch. Statewatch pointed out that, in its reply, Frontex failed to indicate whether the foreseen revision of the Decision on public access will bring it in line with Regulation 1049/2001.

#### **The Ombudsman's assessment**

**25.** The Ombudsman welcomes Frontex's commitment to change its practice of having the same person deal with both the initial and confirmatory applications for access.

**26.** As regards his suggestion concerning a public register of documents, the Ombudsman understands that creating a public register which is fully operational and efficient is a complex task. Because he trusts that Frontex will comply with its commitment and will start operating, by the end of 2013 or the beginning of 2014, a temporary solution which will precede a permanent solution, the Ombudsman will not pursue this issue any further. He takes this opportunity to remind Frontex that the public register should include a list of sensitive documents, in accordance with Regulation 1049/2001<sup>10</sup>. In this respect, he will make a further remark below.

**27.** Finally, the Ombudsman welcomes the fact that Frontex is currently revising the Decision on public access. He trusts that his remarks summarised in point 23 above will be reflected in the revision. He will make in this respect a further remark below.

#### **D. The Ombudsman's suggestions concerning selection procedures**

##### **Frontex's stance**

**28.** The Ombudsman suggested in the Report that the letter informing a candidate about the outcome of a selection procedure could include the candidate's own marks in interviews/written tests and the individual evaluation sheet. He also noted that such information should, at least, be provided upon request. Frontex replied that the information published on the website concerning the selection procedures, as well as each published vacancy notice,

<sup>10</sup> Article 9(3) of Regulation 1049/2001 provides: "*Sensitive documents shall be recorded in the register or released only with the consent of the originator.*"



includes instructions on how to request additional information about the outcome of the selection procedure.

**29.** The Ombudsman suggested that the relevant section of Frontex's website, in respect of each selection procedure, and the letter addressed individually to each unsuccessful candidate could include information on (i) Frontex's internal review procedure; and (ii) candidates' right to complain to the Ombudsman, to lodge an administrative complaint pursuant to Article 90(2) of the Staff Regulations and to turn to the EU Civil Service Tribunal. In reply, Frontex put forward that information on its internal review procedure, in addition to the information on the possibility to lodge an administrative complaint under Article 90 of the Staff Regulations and to bring an action before the EU Civil Service Tribunal, is already available on Frontex's website. It also stated that information about the possibility lodging a complaint with the Ombudsman will be added in the vacancy notices template and in the recruitment-related part of Frontex's website.

**30.** The Ombudsman suggested that Frontex could consider adopting a decision that would allow the names of selection board members to be disclosed on its website as regards each selection procedure. In its reply, Frontex expressed the view that disclosure of the names of the members of the selection board to all applicants would create problems for running recruitment processes. Currently, communication is channelled through the Human Resources Department. All information related to the content of the selection procedure is provided by the selection board members and streamlined via that department. Disclosing the names creates the risk of questions being directly addressed to a particular member. Disclosing the names does not seem to be an established practice among most EU institutions or bodies when recruiting temporary and contractual staff. Frontex found the Ombudsman's suggestion "*interesting*" but took a view that the disadvantages seem to outweigh the advantages.

### **The Ombudsman's assessment**

**31.** As regards Frontex's negative reply to the Ombudsman's suggestion that the names of selection board members may be disclosed on its website as regards each selection procedure, the Ombudsman takes the view that his further inquiries into this aspect are not justified in the framework of the present own-initiative inquiry. The Ombudsman has instead opened an own-initiative inquiry involving all EU agencies, EPSO and the Commission on the subject of public disclosure of the names of the members of selection boards (OI/4/2013/CK).

**32.** The Ombudsman welcomes Frontex's reply that the information about the possibility for lodging a complaint with the Ombudsman will be added in the vacancy notices template and in the recruitment-related part of Frontex's website.



E. The Ombudsman's suggestion that Frontex's letters to rejected tenderers could contain information on the European Ombudsman's role in receiving complaints

#### **Frontex's stance**

**33.** In its reply to the Report, Frontex agreed in principle with the Ombudsman's suggestion. It stated, however, that any document used for the purposes of procurement procedures is based on the Commission's relevant template. As soon as the Commission amends its template, Frontex will be happy to use the amended template.

**34.** In his further letter to Frontex, the Ombudsman asked Frontex to confirm its readiness to follow his suggestion even if the Commission's template is not amended. He pointed out, in this respect, that other agencies, which also use the same templates (Cedefop and EEA), have agreed to include the information in question in their letters rejecting tenders, following the Ombudsman's suggestion to that effect.

**35.** Frontex replied that the Commission's model letter to unsuccessful tenderers was in the meantime updated in March 2013 and, subsequently, Frontex updated its own model letter to unsuccessful tenderers. This model now contains information about the role of the Ombudsman in receiving complaints from tenderers and also the relevant Internet address.

#### **The Ombudsman's assessment**

**36.** The Ombudsman is satisfied that Frontex complied with his suggestion.

F. The Ombudsman's suggestion that Frontex could complete its already comprehensive guidance in the document entitled "Reporting on suspected improprieties" published on 18 January 2010 with information that, in cases where a staff member decides to turn to the Ombudsman by virtue of Article 22b of the Staff Regulations, the Ombudsman will deal with his or her concerns in the same procedural way as when dealing with complaints

#### **Frontex's stance and the Ombudsman's assessment**

**37.** In its reply to the Report, Frontex stated that it would comply with the Ombudsman's suggestion. The Ombudsman welcomes this stance.

G. The Ombudsman's suggestion that Frontex will adopt, without delay, the Manual of procedures for the application of the implementing rules on the Frontex policy protecting the dignity of the person and preventing psychological harassment and sexual harassment

#### **Frontex's stance and the Ombudsman's assessment**

**38.** In its reply to the Report, Frontex stated that it will adopt a Management Board Decision in relation to preventing psychological and sexual harassment,



including the Manual of procedures, in the course of 2013. The Ombudsman takes careful note of this reply.

## Conclusion

On the basis of his inquiry, the Ombudsman closes it with the following conclusions:

**The Ombudsman welcomes Frontex's constructive approach and willingness to implement the majority of the suggestions that he made after his visit to the Agency. While regretting that Frontex did not agree to proactive disclosure of the names of Selection Board members, the Ombudsman notes that this issue is now being dealt with in an own-initiative inquiry addressed to all the agencies.**

Frontex and Statewatch will be informed of this decision.

## Further remarks

**The Ombudsman welcomes the fact that Frontex is currently revising the Decision of its Management Board, dated 21 September 2006, laying down practical arrangements regarding public access to documents. He reminds Frontex of the need to implement fully the provisions of Regulation 1049/2001 and in particular that its register should include a list of sensitive documents<sup>11</sup>. He also requests Frontex to send the revised Decision to the Ombudsman by the end of March 2014.**

**The Ombudsman encourages Frontex to help citizens who visit its website by providing a link to the European Code of Good Administrative Behaviour.**

Done in Strasbourg on 26 -09- 2013

Nikiforos Diamandouros

<sup>11</sup> Article 9(3) of Regulation 1049/2001 provides: "Sensitive documents shall be recorded in the register or released only with the consent of the originator."