



Recommendations of the European Ombudsman in case 758/2017/MDC on FRONTEX's allegedly discriminatory language policy and the non-availability of an Italian version of two documents

Recommendation

Case 758/2017/MDC - **Opened on** 04/07/2017 - **Recommendation on** 23/07/2018 - **Decision on** 02/04/2019 - **Institutions concerned** European Border and Coast Guard Agency (Recommendation agreed by the institution) | European Border and Coast Guard Agency |

Made in accordance with Article 3(6) of the Statute of the European Ombudsman [1]

The inquiry arose from a complaint by an Italian citizen who wanted to obtain an Italian language version of a document from the European Border and Coastguard Agency (Frontex). The Ombudsman considered that her inquiry should focus on the language policy of Frontex in its external communications.

The Ombudsman recommends to Frontex that it make general information about the Agency available on its website in all the EU official languages. She recommends also that Frontex should publish its language policy on its website in all the EU official languages.

Background to the complaint

1. In March 2017, the complainant, an Italian citizen, asked the European Border and Coastguard Agency ('Frontex') to make available in Italian a document entitled, " *Risk Analysis for 2017* " (the document had been published in English on Frontex's website [2]). He also requested that the homepage of Frontex's website and information regarding the Agency's language policy be made available in Italian [3] .

2. In its reply of 18 April 2017, Frontex stated that it did not have an Italian version of the requested document. It pointed out that the working language of Frontex is English. Thus, it normally produces documents in that language. Frontex stated, however, that some of the videos available on its website have Italian subtitles. It added that it is working on providing general information about Frontex in five EU official languages, including Italian.

3. In his reply of 22 April 2017, the complainant pointed out that publishing the document in English only constitutes discrimination within the meaning of Article 21 of the Charter of Fundamental Rights of the European Union. He also requested access to the decision laying



down that Frontex's working language is English. He pointed out that that decision must be made available in Italian.

4. In its reply of 26 April 2017, Frontex again stated that it does not have an Italian version of " *Risk Analysis for 2017*". It also informed the complainant that the Executive Director's Decision No 2014/86 on the internal use of languages [4] was not available in Italian. Frontex provided him with the English version.

5. Since he was dissatisfied with Frontex's reply, the complainant lodged a complaint with the Ombudsman.

The inquiry

6. In opening the inquiry the Ombudsman noted that the language policy of EU institutions must be reasonable and must be objectively justified. Moreover, the language policy of EU institutions should be published online in all EU official languages. In this context, she noted that Frontex's language policy was not available online. She also noted that in September 2013 Frontex had made a commitment, in the context of a previous Ombudsman inquiry [5], to make available on its website general information about its mandate and activities in French, German, Spanish, Italian, Greek and Polish within the first months of 2014 and to make every effort to extend the list of languages to all 24 EU official languages by the end of 2014. The Ombudsman asked Frontex (i) to clarify the content of its language policy and the reasons underpinning it; and (ii) to elaborate on why it had not implemented its previous commitments to the Ombudsman.

7. In the course of the inquiry, the Ombudsman received the Frontex reply and, subsequently, the comments of the complainant in response to FRONTEX's reply. The Ombudsman's recommendations take into account the arguments and views put forward by the parties.

FRONTEX's language policy and its previous commitments to the Ombudsman to make general information available on its website in a number of languages

Arguments presented to the Ombudsman

8. Frontex stated that, in accordance with Article 73(1) of its founding Regulation [6], it applies the provisions of Regulation 1/1958 on Multilingualism [7] and considers all the official languages of the EU to be its official languages. It contended that it had acted in accordance with Article 6 of Regulation 1/1958 when it adopted Decision No 2014/86 on the internal use of languages, which stipulates which languages are to be used in specific cases. It stated that this Decision lays down that English is the sole working language of Frontex. This is justified by the objectives of efficiency and cost-effectiveness. According to Frontex, it is a practice shared by other EU bodies.

9. Frontex stated that it produces all documents in English, as this allows swift internal decision-making. It added that operational activities are conducted in English by border guards. With regard to the risk analysis report requested by the complainant, Frontex argued that, given that its " *activities are intelligence-based, risk analysis carried out enables decision-making by the Agency for the planning of operational and capacity-building activities with*



the aim of preventing and combating cross-border crime and irregular migration into the EU, as well as contributing to the saving of lives". Frontex considered that translating the requested document into other languages would not meet that aim.

10. Moreover, Frontex contended that its mandate is to assist law enforcement officers of the EU Member States in the management of the Union's external borders. It stated that English is the mandatory language of communication in the aerial and maritime environment. Thus, all communications and relevant documentation in Frontex-coordinated operational activities are in English.

11. Frontex also drew attention to the fact that the complaint form that it has made available to complainants in the context of its Complaints Mechanism is available in English, Arabic, French, Pashtu, Tigrinya and Urdu [8] . Frontex considered this to be clear proof that Frontex's language policy is an ambitious one, where possible.

12. As far as the information available on Frontex's **website** was concerned, the Agency said that it was still committed to making general information about its mandate and activities available in languages other than English.

13. However, it contended that "*the repeated migration crisis in 2014-2016 and the current security crisis ... have meant reprioritisation and adjusting to constantly changing needs over the last years. Operational measures to support EU Member States were inevitably given most importance, while other pending matters, such as translating sections of the website, had to be postponed.*"

14. Frontex added that it is an agency undergoing transformation. It has experienced drastic changes over the years, not only to its tasks, staff and organisational structure, but also to its mandate. These changes in turn affected the content of the Agency's website.

15. In view of these changes, Frontex stated that it is currently working on a revised version of its website which should make the Agency more accessible to the public, since it will be easier to retrieve information from it. The new website will also contain Frontex's language policy. Frontex contended that, once the revision of the website is completed, general information on the mandate and activities of the Agency will be available in French, German, Italian, Spanish and Polish. The first four languages were selected due to their prevalence in the Frontex Management Board proceedings, in subsequent operational work and in the EU in general. Polish was selected because it is the language of the Member State where Frontex is located. The Agency added that short animations and informative videos would also be made available on the new website and would contain subtitles in five languages.

16. In view of the above, the Agency contended that it embraces linguistic diversity and that it is committed to taking practical steps in that direction.

17. The complainant considered that Frontex's reply was not satisfactory. He stated that, when mentioning the ongoing revision of the website, Frontex did not give a date by which this new website would be available. Moreover, Frontex had already shown in the past that it



had not abided by commitments it had made to the Ombudsman.

18. The complainant also contended that he is a victim of language discrimination, since Frontex is preventing him from being informed about the content of the document he requested. This puts him at a disadvantage with regard to EU citizens who understand English. According to the complainant, Frontex's argument - that translating the requested document into other languages would not allow the Agency to meet its aim of preventing and combating cross-border crime and irregular migration into the EU, as well as contributing to the saving of lives - not only lacks a legal basis, but is also extremely offensive.

The Ombudsman's assessment leading to a recommendation

19. A distinction should be drawn between Frontex's internal language policy, which is essentially contained in Decision 2014/86 *on internal use of languages* and its external language policy, that is, the languages used in Frontex's communications with the public, particularly on its website.

Internal language policy

20. Recitals 3 and 4 of the preamble to Decision 2014/86 , state that:

" (3) Art. 27(2) of the Frontex Regulation obliges the Agency to publish the General Report and the Programme of Work in all EU official languages. Therefore, a contrario, it is at Frontex' discretion as to which languages are used in other specific cases.

(4) Efficiency and cost effectiveness are continuing objectives of Frontex, which justifies adoption of English as a sole working language of the Agency. "

21. The Ombudsman notes that in Frontex's reply, Frontex provided further reasons for its decision to use English as its sole working language (essentially, the need for swift internal decision-making and the fact that operational activities are conducted in English). The Ombudsman considers that Frontex has provided reasonable and objective justifications for its internal language policy. She takes the view that Frontex's internal language policy attempts to strike a proper balance between the interest of EU citizens in being aware of Frontex's annual activities and the public interest in using limited resources effectively and maintaining efficiency. Given the tasks and mission of Frontex, which require rapid decision-making and action, it is reasonable and proportionate that, as far as its official documents are concerned, only the General Reports and the Work Programmes are available in all EU official languages. Frontex's choice cannot, therefore, be considered to be discriminatory.



The 'Risk Analysis for 2017'

22. The Ombudsman notes, with regard to the document which gave rise to this complaint, that is, the *Risk Analysis for 2017*, that, according to a Frontex publication entitled *Common Integrated Risk Analysis Model* [9], "the purpose of risk analysis is to provide information and analysis that will enable **decision-making** on how to reduce and mitigate risk where resources and capabilities are limited. ..., by enabling **decision-makers** to take informed decisions, risk analysis will contribute to closing the largest gaps between risk and capabilities" (emphasis added). Moreover, the *Risk Analysis for 2017* states, on page 2 of the publication that "Frontex risk analysis is meant to be at the centre and to form a reliable basis for its operational activities" [10].

23. The document gives a 'situational picture', with an emphasis on identified migratory trends and surveillance activities, and utilises a set of reliable indicators on irregular migration. It also provides an analysis of the key risks affecting the security of the external borders and/or internal security. It aims to provide an overview which will help make informed decisions on both common European investments and concerted actions to improve the management of external borders and uphold the internal security of the Union. Thus, the *Risk Analysis for 2017* is primarily aimed at a specific professional audience: decision-makers. Nevertheless, its presentation and layout, the language used and the fact that the subject covered by the *Risk Analysis for 2017* is of interest to the public at large, lead to the conclusion that the general public also forms part of the targeted audience.

24. The Ombudsman points out that there is no legal requirement, under Regulation 1/1958 on Multilingualism or any other legal instrument, that obliges Frontex to make a document such as the one at issue in this case available in all the official EU languages. Yet, if the document also targets the general public, Frontex should consider making it available in more languages.

25. The Ombudsman is perfectly aware that there may be budgetary constraints that hinder publication in more languages and that striking the right balance in this area is difficult. The Ombudsman is currently considering what contribution she might make on the issue of the use of EU languages by all EU institutions and bodies, given the importance of reconciling the language rights of EU citizens, and the related obligations on EU institutions and bodies, with the need for administrative efficiency and the protection of the EU budget. In these circumstances, she will not inquire further into the issue of whether the *Risk Analysis for 2017* should be made available in other languages.

External language policy

26. Article 6 of Regulation 1/1958 on Multilingualism, which lays down that the institutions "may stipulate in their rules of procedure which of the languages are to be used in specific cases" [11], does not necessarily justify having a very restrictive external language policy.

27. Frontex's website does not provide information on its external language policy. With



regard to the information available on the homepage in different languages, it is regrettable that, despite the earlier inquiry conducted by this Office [12] which dealt with, among other issues, Frontex's language policy for its website, things have not improved. It is not clear to the Ombudsman whether Frontex actually has a policy on the languages to be used in its external communications.

28. Though Frontex had made a commitment (in a letter to the Ombudsman dated 10 September 2013) to make available on its website general information about the Agency in French, German, Spanish, Italian, Greek and Polish within the first months of 2014, and to make every effort to extend the list of languages to all 24 EU official languages by the end of 2014, Frontex has failed to carry out in almost **five years** what it had originally expected to accomplish in a few months.

29. The Ombudsman notes that it is true that, following the migration crisis, Frontex underwent a profound transformation. However, it is also true that, from its letter of 2013, it seemed feasible to envisage translating just the homepage of Frontex's website into all the EU official languages within a short span of time [13]. It is regrettable that so many years after the commitment made to the Ombudsman, Frontex has not even included a note on its website excusing itself for the lack of availability of the homepage of its website in other EU languages.

30. The Ombudsman reminds Frontex of her predecessor's explanation to Frontex of the role of the homepage, which 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 understand, if necessary, the reasons why particular documents are available only in certain languages..."* [14].

31. The Ombudsman welcomes the efforts made with regard to the availability of the Frontex complaint form (to be used in the context of the Complaints Mechanism) in the most common languages spoken by refugees and asylum seekers. However, it is also important that EU citizens are provided with general information about Frontex in their own language on the Agency's website. The Ombudsman is pleased to note that the website is undergoing important modifications, but it would be better if Frontex were to announce a date by which the website's revision should be completed.

32. In light of the above, the Ombudsman finds that Frontex's failure to carry out the commitments it made in 2013 constitutes maladministration. She therefore makes a corresponding recommendation below, in accordance with Article 3(6) of the Statute of the European Ombudsman.

33. As the Ombudsman pointed out in opening the inquiry, the external language policy of EU institutions should be published online in all EU official languages. The Ombudsman notes Frontex's statement that the new website will include Frontex's language policy. It is unclear if this is a reference to its policy on external communication, when this will take place



and whether the intention is to publish the language policy in English only. In any event, the Ombudsman considers that the fact that Frontex's external language policy is not currently publicly available in all the EU official languages constitutes maladministration. She will make a corresponding recommendation below, in accordance with Article 3(6) of the Statute of the European Ombudsman.

34. Depending on the reply of Frontex to the recommendations, the Ombudsman may decide to report this matter to the European Parliament.

Recommendations

On the basis of the inquiry into this complaint, the Ombudsman makes the following recommendations to Frontex:

Frontex should publish its external language policy on its website in all the EU official languages, without delay. If such a policy has not already been drawn up, Frontex should draw one up immediately.

Frontex should make general information about the Agency available on its website in all the EU official languages as soon as the revision of the website is concluded and should inform the Ombudsman of the date by which the revision is expected to be completed.

Frontex and the complainant will be informed of these recommendations. In accordance with Article 3(6) of the Statute of the European Ombudsman, Frontex shall send a detailed opinion within **three months** of the date of these Recommendations.

Emily O'Reilly

European Ombudsman

Strasbourg, 23/07/2018

[1] Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15.

[2] <https://frontex.europa.eu/publications/?pq=&year=2017&category=riskanalysis>

[3] The complainant relied in particular on Article 21 of the Charter of Fundamental Rights of the European Union, but also cited Articles 22, 41 and 42 of the Charter, as well as Article 74 of Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No



863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, OJ 2016 L 251, p. 1.

[4] Decision of the Executive Director No 2014/86 on internal use of languages of 17 December 2014.

[5] Decision of the European Ombudsman closing the own-initiative inquiry OI/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), available at: <https://www.ombudsman.europa.eu/cases/decision.faces/en/51885/html.bookmark>

[6] Regulation (EU) 2016/1624 of 14 September 2016 on the European Border and Coast Guard, OJ 2016 L251, p. 1.

[7] Regulation No1 of 15 April 1958 determining the languages to be used by the European Economic Community, OJ 17, 6.10. 958, p.385.

[8] The Ombudsman points out that, since Frontex sent its reply, the complaint form has also been made available in Albanian, Russian, Serbian and Spanish. This information was provided to the Ombudsman in the context of Query Q3/2017/MDC.

[9] Available at:

<https://europa.eu/capacity4dev/ibm-eap/document/71-common-integrated-risk-analysis-model-ciram-co>

[10] On p. 11 of the *Risk Analysis for 2017*, Frontex operational activities are described as being aimed " *at strengthening border security through the coordination of Member States' actions regarding the implementation of EU measures for the management of external borders. The coordination of operational activities contributes to more efficient allocation of Member States' resources and better protection of the area of freedom, security and justice. In this context, the Risk Analysis for 2017 concentrates on the scope of Frontex operational activities and, in particular, on irregular migration at the external borders of the EU and Schengen Associated Countries.* "

[11] The Ombudsman points out that Frontex must exercise its discretion as to which languages are used " *in specific cases* " within the limits set by the rules and principles applicable to it.

[12] Own-initiative inquiry OI/13/2012 MHZ, available at:

<https://www.ombudsman.europa.eu/en/cases/case.faces/en/5079/html.bookmark>

[13] See paragraph 13 of the Decision closing the abovementioned own-initiative inquiry OI/13/2012 MHZ.

[14] See paragraph 12 of the Decision closing the abovementioned own-initiative inquiry OI/13/2012 MHZ.