

Solution proposal on the European Border and Coast Guard Agency's (Frontex) refusal to give public access to documents concerning the 'European Border and Coast Guard Day' (case 1062/2021/ABZ)

Solution - 21/07/2021

Case 1062/2021/ABZ - Opened on 15/06/2021 - Decision on 07/12/2021 - Institution concerned European Border and Coast Guard Agency (Solution achieved) |

Made in accordance with Article 3(5) of the Statute of the European Ombudsman [1]

Background

1. In March 2021, a journalist submitted a complaint to the Ombudsman concerning Frontex's decision on his request for public access to documents [2] . The complainant's request concerned expenses incurred in relation to Frontex's annual event, 'European Border and Coast Guard Day' [3] .

2. Frontex provided only very limited access to the documents, arguing that their disclosure could undermine the protection of commercial interests [4] of those concerned. It also stated that the documents contained only fragmented information related to the complainant's access request.

3. In the course of the inquiry, Frontex provided the complainant with the information he was looking for, in relation to dinners. The Ombudsman therefore closed the case [5] .

4. In April 2021, the complainant submitted a new request to Frontex, seeking access to further details of the expenses related to the same Frontex's annual events.

5. Frontex restated its previous decisions on the complainant's request, saying that circumstances had not changed in the meantime [6] .

6. In May 2021, the complainant asked Frontex to review its decision. Frontex again said that there had been no change in circumstances.

7. Dissatisfied with Frontex's replies, the complainant turned to the Ombudsman in June 2021.



The inquiry

8. The Ombudsman opened an inquiry into whether Frontex's decision to provide partial access to the documents in question was justified under the EU's rules on public access to documents.

9. In the course of the inquiry, the Ombudsman received Frontex's reply in relation to the complaint and reviewed the documents that Frontex identified as falling within the scope of the complainant's request.

On disclosure of the documents

Arguments presented to the Ombudsman

10. The complainant said that since Frontex would not hold these events in the future, the need to protect commercial interests no longer justified not disclosing the documents. He also argued that there is an overriding public interest in the release of the documents.

11. Frontex said that the documents contained "working methods, know-how, internal organization, proposed and actual prices, budgetary considerations as well as negotiation positions". In Frontex's view, their disclosure would undermine the protection of commercial interests [7] of Frontex and other market actors. In particular, it would impede Frontex's future ability to participate in the relevant market.

12. Lastly, Frontex indicated that there was no overriding public interest, which would justify disclosing the documents.

The Ombudsman's assessment

13. A review of the documents in this case shows that they contain detailed information on the expenses incurred by Frontex in relation to its annual events. Parts of the documents include information on proposed prices and negotiation positions.

14. Disclosing the documents in full could compromise Frontex's ability to obtain competitive prices for similar events in the future, since other bidders would be able to tailor their bids basing themselves on accurate information regarding the winning bid.

15. Disclosing the documents in full could also compromise the legitimate commercial interests of the winning bidder. If details of its bids were made public, its competitors would obtain an advantage over the winning bidder.



16. Regulation 1049/2001 does provide for the possibility that the need to protect commercial interests is set aside where there is an overriding public interest in access to the documents.

17. Accordingly, a number of factors lead the Ombudsman to conclude that, in this particular case, there is an overriding public interest in disclosure of certain information in the documents.

18. The Ombudsman notes, by analogy, that EU law [8] has recognised that a public interest may exist for public key information regarding *“the use of public revenues, in particular as regards expenditure on staff. Such information (...) may make a contribution to the public debate on a question of general interest, and thus serves the public interest”*.

19. The possibility to scrutinise how public money is spent helps strengthen public trust in the EU institutions and ensures a greater legitimacy in relation to their functioning.

20. The Ombudsman also finds that many members of the public would find that the spending of such sums of money on items such as food and entertainment for staff and national officials who work with Frontex to be noteworthy, and therefore worthy of accountability.

21. Frontex has made available certain information on the expenditure in question. However, given the nature of the expenditure on food and entertainment, and given the sums involved for that type of expenditure, the Ombudsman considers that in this case there is an overriding public interest in improved access to the documents.

22. The Ombudsman's view is therefore that making available to the complainant the amounts spent on *certain aspects* of each of the events in question, namely the amounts spent on food and entertainment, strikes a fair balance between the need to protect the legitimate commercial interests identified above and the need for the public to know how Frontex spent money on events for its staff and others.

The proposal for a solution

Based on the above findings, the Ombudsman proposes that Frontex reconsider its decision on the complainant's access request and provide broader access to the documents, by disclosing information on the amounts spent on food and entertainment in relation to Frontex's annual events.

Frontex is invited to inform the Ombudsman by **20 September 2021** of any action it has taken in relation to the above solution proposal.

Emily O'Reilly European Ombudsman

Strasbourg, 21/07/2021



[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] Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents:
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1049&from=EN>, applicable to Frontex pursuant to Article 114(1) of Regulation 2019/1896 on the European Border and Coast Guard: <https://eur-lex.europa.eu/eli/reg/2019/1896/oj>.

[3] The European Border and Coast Guard Day is an event organised by Frontex to share experiences and best practices among the border-guard community. More information available at: <https://ebcgday.eu/> [Link].

[4] Article 4(2) first indent of Regulation (EC) No 1049/2001.

[5] <https://www.ombudsman.europa.eu/en/case/en/58999> [Link].

[6] Judgment of the Court of Justice of 26 January 2010 in [case C-362/08P](#) [Link], *Internationaler*

Hilfsfonds v Commission , paragraph 56.

[7] Article 4(2) first indent of Regulation (EC) No 1049/2001.

[8] Judgment of the Court of Justice of 20 May 2003 in [case C-465/00](#) [Link], *Österreichischer Rundfunk and Others* , paragraphs 81 to 85.