

Decision in case 1328/2017/EIS on the refusal by Frontex to grant access to a document concerning the vessels used in the Poseidon and Triton border control operations

Decision

Case 1328/2017/EIS - Opened on 02/08/2017 - Decision on 23/11/2017 - Institution concerned European Border and Coast Guard Agency (No maladministration found) |

The case concerned the refusal by the European Border and Coast Guard Agency (Frontex) to grant full public access to a document *concerning the vessels used in the Poseidon and Triton operations on border control and surveillance*. *Frontex refused to grant access to the document on the grounds that doing so would undermine public security.*

The Ombudsman inquired into the issue and found that Frontex's position was justified, so she closed the case with a finding of no maladministration.

Background to the complaint

1. The complainant is a German national. On 18 June 2017, he asked the European Border and Coast Guard Agency (Frontex) to give him public access to documents concerning the Triton and Poseidon border control and surveillance 'Joint Operations' [1]. In particular, he asked for "*a list of all vessels currently deployed by Frontex in the Central and Eastern Mediterranean in Operations Poseidon and Triton with basic information about the fleet, including vessel names, callsign, MMSI, flag, Port of Registry, Service Speed, Vessel Type and Fuel Capacity*".

2. On 30 June 2017, Frontex rejected the request. It based its decision on the exemptions foreseen in the EU's Access to Documents Regulation regarding public security (Article 4(1) of Regulation 1049/2001) [2]. According to Frontex, "*disclosing information on any details related to technical equipment deployed in the current and ongoing operations would be tantamount to revealing weaknesses and strengths of the operations and opening way for abuse, including by the smuggling networks who would change their modus operandi accordingly*".

3. On 3 July 2017, the complainant asked Frontex to review its decision (through the 'confirmatory application' procedure). He argued that Frontex failed to explain how disclosure of the information in question could **specifically and effectively** undermine public security. He



also referred to the relevant EU case law, according to which the exceptions in Article 4 of Regulation 1049/2001 must be interpreted strictly and the risk of an interest being undermined must be reasonably foreseeable and must not be purely hypothetical. In his view, the reasons provided by Frontex did not identify any specific or foreseeable harm resulting from the disclosure of the documents. On the contrary, he found it difficult to believe that the information would not be already known to smugglers. He considered that the opposite is true: whenever a Frontex vessel is in action, its flag, name and vessel type are on display. Furthermore, the Commission and Frontex already make some fleet information publicly available [3] . Finally, the complainant pointed out that Frontex did not assess the possibility of granting partial access to the documents.

4. On 25 July 2017, Frontex replied to the complainant and confirmed its previous position.

5. On 27 July 2017, the complainant turned to the Ombudsman.

The inquiry

6. The Ombudsman opened an inquiry into the refusal of public access to the requested documents.

7. In the course of the inquiry, the Ombudsman inspected Frontex's file on this case. The inspection report was forwarded to the complainant with an invitation make comments. None were received.

8. The Ombudsman's decision takes into account the arguments and views put forward by the parties.

Refusal to grant access to the documents

Arguments presented to the Ombudsman

9. According to the complainant, the information in question is already known to smugglers. He further noted that Frontex failed to explain how the disclosure of the information in question could **specifically** and **effectively** undermine public security.

10. Frontex argued that combining publicly available information with the information included in the requested document would enable those engaged in illegal immigration and trafficking of human beings to change their ways of working in order to circumvent border surveillance. This would undermine the protection of the public interest in public security.

The Ombudsman's assessment



11. The Ombudsman's inspection showed that the information available online is not as detailed as the information included in the document to which the complainant requested access. Indeed, as Frontex explained in its decision on the complainant's 'confirmatory application', combining the information contained in the document with other publicly available information could give third parties more precise information about the movements and the nature of the patrolling vessels, which could therefore undermine public security. According to the relevant EU case law [4], the concept of public security can encompass situations in which public access to particular documents could obstruct the attempts of authorities to prevent criminal activities. Moreover, the public security exemption relied upon by Frontex is absolute, in the sense that it cannot be overcome by an overriding public interest.

12. Taking all the arguments into account, the Ombudsman considers that Frontex's position is justified and disclosure of the requested documents would undermine the public interest in public security. Consequently, the Ombudsman concludes that there was no maladministration by Frontex [5].

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

There was no maladministration by Frontex.

The complainant and Frontex will be informed of this decision.

Emily O'Reilly

European Ombudsman

Strasbourg, 23/11/2017

[1] The **Triton** operation aim is to enhance border control and surveillance of the territorial waters of Italy and parts of the 'search and rescue zones' of Italy and Malta. More information on Joint Operation Triton is available at:

<http://frontex.europa.eu/pressroom/hot-topics/joint-operation-triton-italy--ekKaes> [Link].

Poseidon is a multipurpose operation taking place in the Aegean Sea. In particular, it aims to implement coordinated operational activities at the external sea borders of the Eastern Mediterranean region in order to control irregular migration flows and tackle cross-border crime,



such as the smuggling of illegal substances and weapons. More information on Joint Operation Poseidon is available at:

<http://frontex.europa.eu/pressroom/hot-topics/joint-operation-poseidon-greece--3lmFxd>.

[2] 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, OJ 2001 L 145, p. 43. Article 4(1) allows EU institutions and agencies to refuse access where “disclosure would undermine the protection of the public interest as regards public security”.

[3] For example, online at

https://ec.europa.eu/epsc/publications/strategic-notes/irregularmigration-central-mediterranean_en.

[4] T-174/95, *Svenska Journalistförbundet v Council of the European Union*, ECLI:EU:T:1998:127, paragraph 121.

[5] See also the Ombudsman’s decision in case 1767/2017/KM, available at:

<https://www.ombudsman.europa.eu/en/cases/decision.faces/en/85292/html.bookmark>