

Päätös asiassa 1767/2017/KM Frontexin menettelystä pyynnön suhteen, joka koski yhteiseen Triton-rajavalvontaoperaatioon liittyviin asiakirjoihin tutustumista

Päätös

Kanteluasia 1767/2017/KM - Tutkittavaksi otetut kantelut, pvm 31/10/2017 - **Päätökset**, pvm 31/10/2017 - **Toimielin, jota kantelu koskee** Euroopan raja- ja merivartiovirasto (Ei hallinnollista epäkohtaa) |

Kantelu koski Euroopan raja- ja merivartioviraston (Frontex) kieltäytymistä antamasta yleisölle täyttä mahdollisuutta tutustua asiakirjaan, joka koski yhteistä Triton-rajavalvontaoperaatiota.

Pyydetty asiakirja sisälsi tietoja siitä, missä Tritoniin osallistuneet veneet olivat pysäyttäneet pakolaisia kuljettavia veneitä. Frontex kieltäytyi paljastamasta joitakin asiakirjan sisältämistä tiedoista sillä perusteella, että tietojen antaminen vaarantaisi operaation. Kantelija kyseenalaisti Frontexin päätöksen ja sen perustelun.

Oikeusasiamies tutki asiaa ja havaitsi, että Frontexin menettelyssä ei ollut hallinnollista epäkohtaa.

Background to the complaint

1. The case relates to the refusal by the European Border and Coast Guard Agency (Frontex) to give access to a document relating to its Triton 'Joint Operation'. The focus of Triton, which was launched in November 2014, is border control and surveillance of the territorial waters of Italy and parts of the 'search and rescue zones' of Italy and Malta, as well as search and rescue in those areas. [1]

2. On 3 September 2017, the complainant asked Frontex to give him public access to documents containing data on precisely where and how boats of migrant smugglers were intercepted off the coast of Libya in the context of operation Triton from 2014 to 2017.

3. On 14 September 2017, Frontex disclosed one large excel file with the information that the complainant had requested. However, it had redacted the **exact longitude and latitude coordinates** of the incidents. It justified its decision by relying on a provision of the EU Access



to Documents Regulation whereby access can be refused if refusal is necessary to protect public security [2] . According to Frontex, releasing the redacted information would hamper the ongoing Triton operations by depriving them of any element of surprise during border surveillance. Frontex argued there was a real risk that this information would be of benefit to smuggling networks, which could alter their routes using such detailed information.

4. The complainant asked Frontex to review its decision (through the ‘confirmatory application’ procedure). He argued that the boat interception data was most likely already known to the smuggling networks. He noted that Frontex had already disclosed this information on a map in the Frontex Risk Analysis Network Quarterly Report or the first quarter of 2017 (see annex 1).

5. Frontex replied on 23 September. It repeated the reasoning of the initial decision and maintained that its initial decision was valid.

6. The complainant responded that Frontex had not replied to a large part of his confirmatory application, repeated his request for the boat interception coordinates and made a second confirmatory application. Frontex maintained that it had properly addressed the complainant’s concerns in the initial decision and reply. Dissatisfied with Frontex’s response, the complainant turned to the Ombudsman.

The inquiry

7. The Ombudsman opened an inquiry into the complainant’s concern that Frontex was wrong not to grant access to the data on the location of interceptions by vessels operating under Triton.

8. In the course of the inquiry, the Ombudsman reviewed the complaint, the initial decision, the confirmatory application, the reply to the confirmatory application and the subsequent correspondence between the complainant and Frontex.

Arguments made by Frontex and the complainant

9. The complainant argues that, as Frontex has already published, on the above-mentioned map, information about where interceptions had happened, it had undermined its argument that the location data could not be published for public security reasons.

10. Frontex argues that disclosing this data would undermine the effectiveness of Triton. It argued that ongoing and future operations under Triton tend to cover similar operational areas as those in preceding years. Thus, releasing the requested data would make smugglers aware of the likely location of the Triton vessels. It also stated that the map the complainant had referred to did not show coordinates.



The Ombudsman's assessment

11. The Ombudsman notes that Frontex carried out an individual assessment of the requested document. It then provided the complainant with extensive partial access to the requested document. As regards the redactions Frontex made, namely the precise coordinates of the locations where Frontex intercepted boats carrying migrants, within the operational area, the Ombudsman finds that Frontex's arguments do justify the refusal of public access.

12. The purpose of the Joint Operation Triton is twofold. On the one hand, Frontex states, on its website, that "search and rescue remains a priority for the agency". On the other hand, however, the primary focus is on "border control and surveillance", one aspect of which is the collection of "intelligence about people smuggling networks". It is with this double objective in mind that the Ombudsman assessed Frontex's reasoning.

13. Frontex had argued that its current operations follow similar routes to those used in the past, and were likely to continue to do so. The Ombudsman accepts this argument. It is also borne out by the map which the complainant referred to and which shows that, while apparently the focus of interceptions moved towards the Libyan coast, the area in which they occurred has remained fairly constant over the years. In this regard, Frontex's argument that providing the precise locations of past interceptions would "deprive [the operation] of any element of surprise" becomes relevant. This "element of surprise" is clearly important for an operation that is meant to rescue migrants from drowning without encouraging criminal smuggling networks and which thus wants to maintain a deterrent effect. This would clearly be undermined if smugglers knew the **precise** location of Triton vessels, which could be very useful for them. It indeed seems likely, as Frontex fears, that they would alter their routes so as to ensure the effectiveness of their fraudulent operations by ensuring that the migrants that paid them are found by a Triton vessel without the smugglers themselves being captured.

14. The complainant had argued that the map showed these locations in any event. However, there is a clear difference between the indicative points on the map in the Frontex report referred to by the complainant, which is small and not precise, and the exact location data contained in the document to which the complainant requested access. Such precise location data is much more useful for navigational purposes. Therefore, the publication of the map in the report does not in any way undermine Frontex's arguments.

15. Finally, the Ombudsman notes that the public security exception which Frontex relied upon is absolute. This means that Frontex did not need to assess whether there was an overriding public interest in the full disclosure of the document.

Conclusion

Based on her assessment, 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, 31/10/2017

[1] More information on Joint Operation Triton

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

[2] Article 4(1)(a) of Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents