
From:
Sent: Friday, 29 November 2019 23:49
To:
Subject: Letter to JHA agencies
Attachments: Letter ED CEPOL re T 31-18- 29 Nov 2019.docx

Dear

Please find attached a first draft for your review. Are the letters to be sent to all nine agencies of the JHA Network?

Best,

Sent by e-mail only

Our ref:

Warsaw, XX December 2019

Dear

Judgment of the General Court in case T-31/18

Since the beginning of this year, public access to documents as laid down in Regulation (EC) No 1049/2001¹ ('PAD Regulation') became another focus area of our close cooperation within the JHA Agencies Network. I would thus like to bring to your attention that on 27 November 2019, the General Court (Court of Justice of the European Union) has delivered its Judgment in the so called 'Triton case' (T-31/18). The case concerns Frontex's decision to refuse public access to certain sensitive operational documents regarding the flag, type and name of Member States' vessels having participated in the then ongoing Joint Operation Triton 2017. In short:

- the Court held for Frontex in regard to all five pleas, dismissing the applicants' claims that Frontex infringed the PAD Regulation.
- Significantly: the applicants have to pay Frontex's costs.

Pending further analysis, the main points of the Judgment are the following:

- 1) The Court underlined the importance for Frontex to protect its sensitive operational information related to ongoing operations.
- 2) We provided plausible explanations that the requested documents may be used by trafficking networks to create a situation in which public security would be affected in a reasonably foreseeable and not purely hypothetical manner.
- 3) The Court distinguished between Frontex's legal obligation from the PAD Regulation and its obligation to pro-actively inform the public about its activities (here: tweets).
- 4) We were right that the disclosure of the flag, name and type of Member States' vessels could be exploited by combining even some of these three elements with information obtained through low tech approaches - e.g. look outs in ports - or high tech solutions such as drones or online vessel tracking tools. Through this, criminal networks could circumvent border surveillance and endanger crews and equipment.

¹ Regulation (EC) No 1049/2001 of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

- 5) The justification we provided was sufficient to not release the documents even partially as has to be examined under the PAD Regulation.

Frontex always balances on a case by case basis the principle of transparency with the necessity to protect sensitive information, such as operational data regarding Frontex joint operations, to ensure the Agency's capability to exercise its mandate. The Judgment confirms Frontex achieved this balance. It reassures Member States that the EU and its bodies can be trusted and citizens that their security is safeguarded, in full compliance with the law.

The Judgment is available on the Court's website under: <http://curia.europa.eu/juris/document/document.jsf?text=&docid=221083&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=4374884>.

Please do not hesitate to contact
, for further information.

Yours sincerely,

Fabrice Leggeri
Executive Director