

Letter from the European Ombudsman to the European External Action Service requesting for a meeting in case 935/2018/EA concerning the handling of requests for access to EUNAVFOR Med Operation Sophia's documents

Correspondence - 19/07/2018

Case 935/2018/FP - Opened on 22/07/2018 - Decision on 22/07/2019 - Institution concerned European External Action Service (No maladministration found) |

Ms Federica Mogherini

High Representative of the Union for Foreign Affairs and Security Policy

European External Action Service ('EEAS')

Strasbourg, 19/07/2018

Complaint 935/2018/EA

Subject: Handling of requests for access to EUNAVFOR Med Operation Sophia's documents.

Dear Ms Mogherini,

On 22 May 2018, I received a complaint. The complaint concerns the handling of requests for access to EUNAVFOR Med Operation Sophia's ('Operation Sophia') [1] documents. I have decided to open an inquiry into this complaint.

The complainant raises two concerns:

- 1) The Operation Sophia refuses to comply with Regulation 1049/2001 [2] ;
- 2) There is a lack of clarity as to which entity is responsible for the Operation Sophia's



documents, and whether and how access to such documents can be requested under Regulation 1049/2001.

The complainant has made multiple requests to the EEAS, the Operation Sophia, the European Commission, and the Council of the European Union concerning a range of documents held by and/or relating to the Operation Sophia. While the EEAS granted him access to some of the requested documents, I take note that he has received contradictory information as to which entity is responsible for handling requests for access to such documents and as to whether Regulation 1049/2001 applies to the Operation Sophia.

As a preliminary point, I would like to stress that while Regulation 1049/2001 only directly applies to the Parliament, the Council, and the Commission, and its application was extended to a number of other bodies by virtue of a specific provision in their respective founding acts or through voluntary acts, Article 15(3) of the Treaty on the Functioning of the European Union ('TFEU') extended the right of access to documents of all the EU institutions, bodies, offices and agencies.

I have decided that, for the purposes of my inquiry, it is necessary to meet with relevant officials of the EEAS to get answers to the following questions:

- 1) The EEAS has said to the complainant that the Operation Sophia is a separate and independent entity, endowed by the Council with legal capacity. On what basis does the EEAS make this assertion?*
- 2) In the EEAS' view, is the Operation Sophia an EU body within the meaning of Article 15 TFEU?*
- 3) The EEAS informed the complainant that, according to the Operation Sophia's legal service, the latter could receive and handle requests for access to documents that are sent directly to it. However, the Operation Sophia has told the complainant that it is not responsible for requests for access to documents under Regulation 1049/2001. Could the EEAS clarify this point?*
- 4) Is there a policy in place regarding how the Operation Sophia handles requests for access to documents?*
- 5) Is there a policy in place for how the EEAS handles requests for access to documents held by and/or relating to the Operation Sophia, or similar Common Security and Defence Policy ('CSDP') Operations?*
- 6) Has the EEAS received requests for access to documents held by and/or relating to other CSDP Operations? If so, how has it dealt with these?*

I would be grateful if your office could contact Ms Elpida Apostolidou (+32 2 284 18 76), who is in charge of this inquiry, to agree the arrangements for the meeting. Depending on the EEAS' availability, I would envisage the meeting taking place in September 2018.



Information or documents that your institution considers to be confidential will not be disclosed to the complainant or any other person without the prior agreement of the EEAS. Information and documents of this kind will be deleted from the European Ombudsman's files shortly after the inquiry has ended. [3]

Please also note that the complainant has asked for the attachments to his complaint to be handled confidentially.

Emily O'Reilly

European Ombudsman

Strasbourg, 19/07/2018

[1] The mission core mandate of Operation Sophia is to undertake systematic efforts to identify, capture and dispose of vessels and enabling assets used or suspected of being used by migrant smugglers or traffickers, in order to contribute to wider EU efforts to disrupt the business model of human smuggling and trafficking networks in the Southern Central Mediterranean and prevent the further loss of life at sea.

[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.

[3] In accordance with Articles 4.8 and 9.4 of the European Ombudsman's Implementing Provisions: <https://www.ombudsman.europa.eu/en/resources/provisions.faces> [Link]