



## Report on the meeting of the European Ombudsman's inquiry team with representatives of the European Maritime Safety Agency

Correspondence - 07/03/2022

**Case** 129/2022/OAM - **Opened on** 03/02/2022 - **Decision on** 06/10/2022 - **Institution concerned** European Maritime Safety Agency ( Solution achieved ) |

**Case title** : How the European Maritime Safety Agency (EMSA) handled a request for public access to documents concerning maritime pollution

**Date** : Monday, 07 March 2022

Remote inspection arrangements

### Present

#### European Maritime Safety Agency

Head of Department, Corporate Services

Head of Department, Safety, Security and Surveillance

Head of Unit, Surveillance

Senior Project Officer, Surveillance Unit

Legal Officer, Legal, Finance and Facilities Unit

#### European Ombudsman

Ms Tanja Ehnert, Inquiries Coordinator, Directorate of Inquiries

Ms Oana Marin, Inquiries Officer, Directorate of Inquiries

Mr Simon Kuban, Inquiries Trainee, Directorate of Inquiries

Purpose of the meeting

The purpose of the meeting was for the Ombudsman inquiry team to obtain further



information on how the European Maritime Safety Agency (EMSA) dealt with the complainant's request for public access to documents [1] containing specific statistical information. The statistics sought by the complainant concern the breakdown of feedback received following CleanSeaNet (CSN) [2] alert reports sent to coastal states on possible oil spills.

#### Introduction and procedural information

The participants introduced themselves and the Ombudsman inquiry team set out the purpose of the meeting. The inquiry team outlined the legal framework that applies to meetings held by the Ombudsman, in particular, that the Ombudsman would not disclose any information identified by EMSA as confidential, without its prior consent.

The inquiry team explained that they would draw up a draft report on the meeting to be sent to the EMSA to ensure that it was factually accurate and complete. The meeting report would then be finalised, included in the file and provided to the complainant for any possible comments.

#### Information exchanged

The Ombudsman inquiry team informed the EMSA representatives that the complainant confirmed, following the submission of his complaint to the Ombudsman, that he was seeking access to certain statistics that EMSA has already published on its website for the years 2015, 2016, 2017, 2018. [3] These statistics contain aggregated data on verification results and the type of spill detected (mineral oil, other substance, unknown feature, natural phenomena, nothing observed), as reported to EMSA by the coastal states following CSN alert reports. The complainant confirmed that he was seeking access to the same kind of data for the 'missing' years between 2012 and 2020. More recently, the complainant informed the Ombudsman that EMSA published in February 2022 more detailed statistics on verification results for the year 2020. He expressed an interest in receiving similar data, at least for the year 2019.

The EMSA representatives explained that CSN is a satellite-based service that provides information on possible oil spills and delivers alert reports to operational maritime administrations of coastal states, which include EU Member States and European Neighbourhood Policy Projects beneficiary Countries. The EMSA representatives emphasised that the follow-up to CSN alert reports is the sole responsibility of the receiving countries. While recipients are invited to report to EMSA feedback on what they find, they remain owners of all reported information. Therefore, data gathered in reply to CSN alert reports can be published or released only after consulting the Member States or third countries from which the information originates. This is the reason why, in this case, EMSA initially advised the complainant to turn to the coastal states for any information he was seeking access to.

Furthermore, the EMSA representatives explained the nature of the information reported by the coastal states. In particular, EMSA representatives emphasised that the feedback received from coastal states, including the verification results, is sensitive in nature, for example as it could show patterns of their response and patrol behaviour.

The EMSA representatives confirmed that the statistical data concerning verification results for the years 2015-2018 was published upon agreement of the 'CSN user group'. The CSN



user group is composed of representatives from the participating coastal states. Since the data does not originate from EMSA, EMSA considers that it is for the CSN user group to decide which data can be published. This is relevant also for data made public in aggregated form. EMSA cannot decide on its own to publish or release such data.

The Ombudsman inquiry team asked whether EMSA holds the statistics for the 'missing' years and whether EMSA consulted the coastal states on the complainant's access to document request.

In reply, the EMSA representatives explained that EMSA does not consult the coastal states on individual applications for public access to documents. Rather, EMSA asks the CSN user group annually whether they agree to the publication of the statistical data and, given the user group's refusal to publish the data for the 'missing' years, it would be redundant to consult the user group again on each individual access to documents request.

The EMSA representatives clarified that EMSA is aware of the public interest (by e.g., journalists, researchers) in certain data. EMSA has therefore repeatedly raised this issue with the CSN user group. Following last year's discussions in the CSN user group, the data published on verification results for the year 2020 was more detailed than in previous years. In the next CSN user group meeting, scheduled for mid-March 2022, EMSA is planning to propose the publication of backlog data for the whole period 2015-2019 in the same format as for the year 2020. In this context, EMSA representatives noted that data older than 2015 is no longer available, either due to the expiry of retention periods or due to incompatibility with the current CSN reporting system. The EMSA representatives explained that, ideally, the 2020 reporting could serve as a new blueprint for publishing information. The new format provides information not only on the type of spill detected (as was the case for the years 2015-2018), but also on the location of the possible spill. However, the CSN user group has yet to agree on applying the new format to the backlog of information (2015-2019).

Finally, the EMSA representatives underlined that EMSA's role is to provide technical assistance to the coastal states. EMSA could become liable if it disclosed information it holds without the prior agreement of the data owners. For example, if certain information is disclosed before an investigation by the coastal states is concluded or during a potential pending Court case associated with a concluded investigation, this could have economic and legal impacts on individuals. As an additional example, in some instances, possible spills detected could turn out to be legal discharges, and thus releasing any information before an adequate verification process could be misleading.

#### Conclusion of the meeting

The Ombudsman inquiry team thanked the EMSA representatives for their time and for the explanations provided. Given the information provided during the meeting, the Ombudsman inquiry team confirmed that EMSA does not have to provide any written reply at this stage.

Brussels, 7 March 2022



Tanja Ehnert Oana Marin

Inquiries Coordinator Inquiries officer

[1] Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents:

<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001R1049>

[2] CleanSeaNet is an European satellite based oil spill monitoring and vessel detection service, set up and operated by the EMSA. More information is available at: Satellite based Services - CleanSeaNet service - EMSA - European Maritime Safety Agency (europa.eu)

[3] In presentations to CleanSeaNet user group for the years 2015, 2016, 2017, 2018:

<http://emsa.europa.eu/we-do/surveillance/earthobservationservices/324-cleanseanet-user-group.html>