

Decision on the European Maritime Safety Agency's (EMSA) refusal to provide full public access to statistics concerning maritime pollution (case 129/2022/OAM)

Decision

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

The case concerned a public access to documents request concerning certain information obtained through the CleanSeaNet service, a tool operated by the European Maritime Safety Agency (EMSA) to monitor maritime pollution. The complainant, an investigative journalism platform, was interested in the results of verifications of possible oil spills on the sea surface, in particular the data for the year 2019. EMSA argued that the originators of the data, the national authorities of the coastal states, opposed its release.

The Ombudsman found that under the EU legislation on public access to documents such an objection could not in itself justify refusing access. The Ombudsman noted that EMSA has published similar data in the past and also pointed out that the requested data constituted environmental information which should benefit from greater transparency.

The Ombudsman therefore proposed that EMSA reassess the request with a view to granting public access. EMSA accepted the solution proposal and has now published on its website extensive information on CleanSeaNet detections of possible oil spills and verification results for the whole period between 2015 and 2021. The Ombudsman welcomes EMSA's positive response to her solution proposal and closed the case.

Background to the complaint

1. The European Maritime Safety Agency (EMSA) operates the CleanSeaNet service, [1] which uses satellite imagery to detect possible oil spills on the sea surface. When a possible oil spill is detected, EMSA sends an alert report to the relevant coastal states. [2] The national authorities then decide how to respond to the alert report, for example by sending a helicopter to check the area and verify the spill. National authorities are also responsible for sending back to EMSA any feedback following verifications, for example if any oil discharges from ships were detected.



2. The complainant, an investigative journalism platform, was interested in information on maritime pollution obtained through the CleanSeaNet. It initially asked EMSA for public access [3] to “ *CleanSeaNet warnings and alert reports*” sent by EMSA to coastal states during certain periods in 2020 and 2021, “ *as well as any feedback forms by member states regarding those warnings and alerts* ”.

3. The complainant and EMSA discussed the access request in a call and exchanged correspondence on various occasions, agreeing to replace the initial request for alert reports with statistical information.

4. EMSA disclosed a document containing various statistical information sought by the complainant. However, it did not disclose statistics on verification results (feedback) received from the coastal states following alert reports and a breakdown of what was detected (mineral oil, other substance, unknown feature, natural phenomena, nothing observed).

5. Dissatisfied with this outcome, the complainant turned to the Ombudsman.

The Ombudsman's proposal for a solution

6. The Ombudsman opened an inquiry into EMSA’s refusal to give public access to documents containing statistics on the verification results for the whole period 2012-2020.

7. In the course of the inquiry, EMSA published detailed statistics on verification results for the year 2020.

8. During a meeting with the Ombudsman inquiry team, [4] representatives of EMSA clarified that data prior to the year 2015 no longer existed. As EMSA had already published certain statistics on verification results for the years between 2015 and 2018, [5] the complainant confirmed to the Ombudsman that he was still interested in receiving this data for the year 2019.

9. EMSA representatives argued during the meeting with the Ombudsman inquiry team that the data gathered in reply to CleanSeaNet alert reports was not ‘owned’ by EMSA, but rather by the national authorities of the coastal states. The data is nevertheless held by EMSA, which compiles it and presents the statistics in yearly meetings to the CleanSeaNet user group (composed of representatives from the participating states). While for the years 2015–2018 and 2020 the user group had agreed to the proactive publication of the statistical data on verification results, it decided against the data’s proactive disclosure for the year 2019. In view of this, EMSA considered that consulting the user group on the complainant’s individual request for public access to statistical data on verification results for the year 2019 was not necessary.

10. The Ombudsman took the view that, even if the originators of the data may object to its disclosure, this cannot in itself justify refusing access. Rather, access to EU documents can be refused only if it is shown that disclosure would undermine one or several of the public and private interests listed in Article 4 of Regulation 1049/2001. However, in this case, EMSA had



not stated which public or private interest would be undermined by granting access to the requested data for 2019.

11. The Ombudsman also noted that the data sought in this case concerned potential maritime pollution and was therefore “ *environmental information* ” within the meaning of the EU Aarhus Regulation. [6] Since the data relates to potential oil spills, the data may also relate to “ *emissions into the environment* ”. This means that greater transparency standards apply.

12. In view of these considerations, the Ombudsman made the following proposal for a solution: [7]

EMSA should assess the statistical data on verification results for the year 2019, in line with Regulation 1049/2001, with a view to granting public access.

13. EMSA accepted the proposal for a solution. [8] It informed the Ombudsman that it has published on its website reports showing information on CleanSeaNet detections of possible maritime spills and the verification results for the whole period between 2015 and 2021. [9]

14. The complainant was satisfied with the outcome.

15. The Ombudsman welcomes EMSA’s positive response to her proposal for a solution and considers that the complaint has been resolved.

Conclusion

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

The European Maritime Safety Agency has accepted the Ombudsman’s proposal for a solution.

The complainant and the European Maritime Safety Agency will be informed of this decision .

Emily O'Reilly European Ombudsman

Strasbourg, 06/10/2022

[1] More information about the CleanSeaNet service is available at:
<https://emsa.europa.eu/csn-menu.html> [Link].

[2] The participating states are EU Member States and their overseas territories, candidate



countries and EFTA Member States.

[3] Under Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents, applicable to EMSA in accordance with its access to documents policy: <https://www.emsa.europa.eu/documents/document-request.html> [Link].

[4] The report of the meeting is available at:
<https://www.ombudsman.europa.eu/en/doc/inspection-report/en/157678> [Link].

[5] EMSA presented the verification results in annual meetings of the CleanSeaNet user group (composed of representatives from the participating coastal states) and then publishes the related documents on its website. Tables containing verification results, more specifically the number of feedback comments provided and what was found (mineral oil, other substance, unknown feature, natural phenomena, nothing observed) were available in the CleanSeaNet user group documents for the years 2015, 2016, 2017, 2018:
<http://emsa.europa.eu/we-do-surveillance/earthobservationservices/324-cleanseanet-user-group.html> [Link].

[6] In line with Regulation 1367/2006 of the European Parliament and of the Council on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies,
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32006R1367> [Link].

[7] The full text of the Ombudsman's proposal for a solution is available at:
<https://www.ombudsman.europa.eu/en/solution/en/161483> [Link].

[8] EMSA's reply is available at:
<https://www.ombudsman.europa.eu/en/doc/correspondence/en/161484> [Link].

[9] CleanSeaNet - Detections and Feedback data (2015-2021) available at:
<https://www.emsa.europa.eu/csn-menu/items.html?cid=122&id=4645> [Link]