



## EUROPEAN COMMISSION

LEGAL SERVICE  
The Director-General

Brussels, 24 August 2022

**By e-mail**

Mr Davide Giovannelli  
Via Campo Catino 27  
00135 Roma  
Italia

[ask+request-11666-  
e5fa62c1@asktheeu.org](mailto:ask+request-11666-e5fa62c1@asktheeu.org)

**Subject: Request for access to documents**

Ref.: Your request of 2 August 2022, registered on 3 August 2022 under reference GestDem 2022/4412.

Dear Mr Giovannelli,

I refer to your application for access to documents under Regulation (EC) No 1049/2001 regarding public access to documents<sup>1</sup>. Your request concerns the submissions of the parties in Joined Cases C-14/21 and C-15/21, *Sea Watch e a.*<sup>2</sup>.

**1. IDENTIFICATION OF THE DOCUMENTS**

After examination of the Legal Service's files, the written observations of the following parties have been identified as matching the terms of your request:

1. the European Commission;
2. Italy;
3. Norway;
4. Spain;
5. Sea-Watch e.V.

---

<sup>1</sup> 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 L 145, 31.05.2001, pg. 43).

<sup>2</sup> Judgment of the Court of Justice of 1 August 2022, Joined Cases C-14/21 and C-15/21, *Sea Watch eV v Ministero delle Infrastrutture e dei Trasporti and Others*, ECLI:EU:C:2022:604.

## **2. WRITTEN OBSERVATIONS SUBMITTED BY THE EUROPEAN COMMISSION (DOCUMENT 1)**

After a concrete assessment of the Commission's written observations, I am pleased to inform you that full access can be granted. Accordingly, please find enclosed a copy of document 1 requested in Italian, the language of the proceedings.

You may reuse the disclosed document free of charge, provided that the source is acknowledged and that you do not distort its original meaning or message. Please note that the Commission does not assume liability stemming from the reuse.

## **3. WRITTEN OBSERVATIONS SUBMITTED BY THIRD PARTIES (DOCUMENTS 2 TO 5)**

As far as the written observations of the other parties are concerned, the Commission has consulted the authors of the respective documents on their disclosure, in accordance with Article 4(4) of Regulation (EC) No 1049/2001. Following these consultations, I would like to inform you that:

- the Governments of Italy and Spain have agreed to the disclosure of their written observations (documents 2 and 4);
- the lawyers representing Sea Watch e.V. (document 5) refused to grant access to their written observations, considering that they are covered by the exception provided for in Article 4(2), second indent, of Regulation (EC) No 1049/2001 ("*protection of court proceedings*"), as explained below in point 3;
- the Government of Norway has not replied to the Commission's consultation (document 3).

With regard to the document for which the Commission did not receive a reply, I would like to inform you that access can be granted in accordance with Regulation (EC) No 1049/2001.

In fact, the Court of Justice has recognized in its judgment in Joined Cases C-514/07P, C-528/07P and C-532/07P that, in cases where the proceedings have been closed by a decision of the Court, there are no longer grounds for presuming that disclosure of the pleadings would undermine those proceedings<sup>3</sup>.

Since Joined Cases C-14/21 and C-15/21 are now closed, and in the absence of an objection from the Norwegian authorities, I conclude that access can be granted to this document in accordance with Regulation (EC) No 1049/2001.

Accordingly, please find enclosed a copy of the original version of document 2 in Italian as well as the Italian translation<sup>4</sup> of documents 3 and 4.

The disclosed documents from third parties were transmitted by the Court of Justice to the Commission in its capacity as participant in the court proceedings. Access to them is granted for information only and they cannot be re-used without the agreement of the originators, who may hold the copyright on them. They do not reflect the position of the Commission and cannot be quoted as such.

---

<sup>3</sup> Judgment of the Court of Justice of 21 September 2010, Joined Cases C-514/07P, C-528/07P and C-532/07P, *Sweden and Others v API and Commission*, ECLI:EU:C:2010:541, paragraphs 130 and 131.

<sup>4</sup> The original language of document 3 is English. The original language of document 4 is Spanish.

#### 4. PROTECTION OF COURT PROCEEDINGS

As stated above, the lawyers representing Sea Watch e.V. have informed the Commission that they oppose to the disclosure of their written observations lodged in Joined Cases C-14/21 and C-15/21, in accordance with the exception provided for under Article 4(2), second indent, of Regulation (EC) No 1049/2001 ("*protection of court proceedings*")<sup>5</sup>.

The purpose of the exception for the protection of court proceedings is to protect the integrity of court proceedings and to ensure the proper course of justice. In this sense, the Court of Justice has recognised in its judgment in Joined Cases C-514/07P, C-528/07P and C-532/07P that disclosure of pleadings lodged before the Court of Justice in pending court proceedings is presumed to undermine the protection of these proceedings<sup>6</sup>.

The Court has furthermore stated that with the closure of the proceedings there are no longer grounds to presume that disclosure of the pleadings would undermine the judicial activities of the Court<sup>7</sup>. However, the Court has admitted the possibility that disclosure of pleadings relating to court proceedings, which are closed but connected to other proceedings, which remain pending, may create a risk that the later proceedings might be undermined<sup>8</sup>.

The lawyers argue that although the proceedings in Joined Cases C-14/21 and C-15/21 have been closed by the judgment of the Court of Justice, they originate from a reference for a preliminary ruling made by the Regional Administrative Court of Sicily in many cases which are still pending. Therefore, the written observations contain information and references necessary not only for Sea Watch e.V. organisation's defence before the Court of Justice, but also within the framework of the aforementioned proceedings.

Moreover, they insist on the fact that the current political context in Italy is very tense, particularly with regard to the issue of migration policies, an issue that undoubtedly touches on the activities of the organisation, which is already at the centre of several court cases and the attention of extreme right-wing parties in the country.

Consequently, the lawyers representing Sea Watch e.V. consider that, for as long as the above said judicial proceedings are pending before the Sicilian Regional Administrative Court, their written observations are entirely covered by the exception mentioned above and they cannot be made publicly available.

In the light of the above, the Commission is unable to grant access to document 5 submitted by Sea Watch e.V..

#### 5. OVERRIDING PUBLIC INTEREST IN DISCLOSURE

Pursuant to Article 4(2) of Regulation (EC) No 1049/2001, the exception to the right of access must be waived if there is an overriding public interest in disclosing the requested documents. In order for an overriding public interest in disclosure to exist, this interest, firstly, has to be public and, secondly, overriding, *i.e.* in this case it must outweigh the interest protected under Article 4(2), second indent. In the present case, I see no elements capable of showing the existence of an overriding public interest in disclosure of the refused document that would outweigh the public interest in the protection of pending national proceedings.

---

<sup>5</sup> "[T]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data".

<sup>6</sup> Judgment of the Court of Justice of 21 September, Joined Cases C-517/07P, C-528/07P and C-532/07P, *Sweden and others v API and Commission*, ECLI:EU:C:2010:541, paragraph 94.

<sup>7</sup> *Ibid*, paragraphs 130 and 131.

<sup>8</sup> *Ibid*, paragraph 132.

## **6. MEANS OF REDRESS**

Should you wish the position to be reconsidered, you should present in writing, within fifteen working days from receipt of this letter, a confirmatory application to the Commission's Secretariat-General at the address below:

European Commission  
Secretariat-General  
Unit C.1. "Transparency, Document Management and Access to Documents"  
BERL 7/076  
B-1049 Brussels

or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,

*[signed electronically]*  
p.p. Vittorio DI BUCCI  
Daniel CALLEJA CRESPO

Attachments: 4