Lisbon, 15 November 2019

Subject: Application for access to documents

Dear Mrs Izuzquiza,

This letter is a reply to your application for access to documents registered the 25th of October 2019 by EMSA whereby you request “documents which contain the following information:"

For the period between 1 January 2016 to date:

- a list of all meetings held by EMSA with the following companies’ representatives and/or intermediaries for these companies: Israeli Aerospace Industries (or IAI), Elbit Systems, and/or CEIIA. The list should include: date of the meeting, individuals attending and their organisational affiliation, as well as the issues discussed;
- all minutes and other reports of these meetings;
- all correspondence, including attachments (including, but not limited to, emails, letters, and/or telephone call notes), between EMSA and any of the three companies mentioned above, including any intermediaries representing their interests; and
- all documents prepared for the purpose of these meetings and/or exchanged during the course of these meetings”.


As far as Israel Aerospace Industries (IAI) is concerned the only written document EMSA has, was in the context of the EMSA/OP/1/2018 procurement procedure, when IAI submitted a letter on 15 May 2018 underlining that they regret not being eligible to submit a proposal as prime contractor. Indeed, European rules for procurement indicated that only companies which were established in a Member State of the Union or one of the other states listed in the invitation to tender were eligible to submit a tender. The letter is attached in Enclosure 1.

With regards to the two other companies, please be informed that contact with CEIIA - Centro de Engenharia e Desenvolvimento (CEIIA) started in the context of the same procurement procedure, as CEIIA was finally awarded and is our current contractor, with Elbit Systems as their subcontractor, under the framework contract 2018/EMSA/OP/01/2018. Following award of the contract, meetings have been held with the awarded company / contractor CEIIA and Elbit in the context of signature and implementation of the contract referenced above. Furthermore, since then two operations were held: one in Iceland for the Icelandic Coast Guard and one in Greece (ongoing) for Frontex.

As a result of our assessment in line with the provisions of the “Access to documents Regulation”, please be informed that EMSA identified the following as containing the information you requested:
Your question:

- “a list of all meetings held by EMSA with the following companies’ representatives and/or intermediaries for these companies: Israel Aerospace Industries (or IAI), Elbit Systems, and/or CEIIA. The list should include: date of the meeting, individuals attending and their organisational affiliation, as well as the issues discussed “

EMSA reply:

Meetings were held as follows:

03 and 04 September 2018 – initial configuration test

After award of the framework contract mentioned above, in the context of the initial configuration test, briefings/debriefings have been held for the initial configuration test including a live flight demonstration. At this meeting representatives of all parties to the contract, EMSA representatives and both CEIIA and Elbit, were present.

Please find relevant documents pertaining to this meeting (Award letter and initial configuration test) in Enclosure No.2.

6 November 2018 – KOM

The kick off meeting with representatives of EMSA, CEIIA and Elbit Systems was held at EMSA premises, in order to establish general contract implementation matters. During this kick-off meeting, it was also agreed that exchange of information and progress reports would be provided through a weekly report between EMSA and CEIIA. An example of this weekly report is attached in Enclosure No.3. The weekly reports summarise also what has been discussed during telephone calls, if any during the period concerned.

Please find relevant documents pertaining to this meeting (presentations made by each company, as well as other relevant documents) in Enclosure No.3.

Week 49 (2018) to Week 36 (2019)

In order to closely follow-up the preparations for the implementation of Specific Contracts No.3 (operations in Iceland) and No.5 (operations in Greece) with CEIIA, EMSA had weekly conference calls with the contractor. The basis for this follow-up conference phone calls were the weekly reports prepared by CEIIA and discussed point by point on the conference calls.

12 December 2018 – site survey in Iceland
Specific Contract (SC) no. 2 implementing the main framework contract was signed on 12 December 2018. This allowed for the mobilization of CEIIA to conduct a site survey and provide all necessary technical documentation to achieve the permit to fly. The site survey for this specific contract took place on 12 December 2018. EMSA representatives met CEIIA and Elbit representatives in order to debrief them on the conclusions of the site-survey and to plan for the operations.

25 to 28 February 2019 – Final radar configuration test

In September 2018, EMSA sent two project officers to Israel (Elbit premises) to confirm the conformity of the radar system following additional flight tests. This included daily briefings/debriefings with both CEIIA and Elbit.

10 and 11 April 2019 – site survey in Greece for Frontex operation

Following the signature of SC no. 4 on 8 April 2019 CEIIA was mobilized to start the preparations for an operation in Greece for FRONTEX. A meeting was held in Greece on 10 April with all stakeholders (EMSA, CEIIA, Elbit). The site survey in Greece took place on 11 April involving the same stakeholders.

10 April to 03 May 2019 – setup and operations in Iceland

Following the signature of SC No.3 implementing the FWC on 15 March 2019 with CEIIA, EMSA sent two project officers to Iceland to support the Icelandic Coast Guard and the contractor during the service setup phase (15 – 23 April) and the first missions of the operational phase (24 April – 03 May). During both periods EMSA had daily operational briefings/debriefings with both CEIIA and Elbit.

The relevant documents regarding operations in Iceland can be found in Enclosure No.4.

Since 14 September 2019 - setup and operations in Greece

Following the signature of SC no.5 EMSA is, since 14 September 2019, intermittently present supporting the setup phase and the first missions for FRONTEX. This includes daily briefings (either face to face or by phone with CEIIA). Sporadically, if Elbit is present onsite, their technicians participate also in the briefings.

The relevant documents regarding operations in Greece can be found in Enclosure No.5.

- “all minutes and other reports of these meetings”;

Please refer to the documents in Enclosures 2 to 5.
• "all correspondence, including attachments (including, but not limited to, emails, letters, and/or telephone call notes), between EMSA and any of the three companies mentioned above, including any intermediaries representing their interests"; and

For the correspondence relating to the procurement procedure (before contract award), namely clarification letters in the context of evaluation of the bid received from CEIIA, please refer to Enclosure 1.

For the correspondence relating to contract signature and implementation, please refer to the documents in Enclosures 2 to 5.

• "all documents prepared for the purpose of these meetings and/or exchanged during the course of these meetings".

Please refer to the following documents in Enclosures 2 to 5.

In line with the provisions of Regulation (EC) No. 1049/2001 a thorough assessment was made in order to identify if the content of these documents can be disclosed in full or partially. Please find below the outcome of the analysis pertaining to the documents in the Enclosures:

Article 4(1)b of the Regulation foresees that access to a document shall be refused where disclosure would undermine the protection of the privacy and integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data.

In case of personal data, the provisions of Regulation 45/2001 shall apply. Given that the application for access to documents did not contain any express and legitimate justifications or arguments substantiating the need to obtain the personal data concerned, the conclusion is that all personal data in the documents shall be protected and therefore not disclosed/removed.

Article 4(2), first indent of the Regulation foresees also that access shall be refused to a document where disclosure would undermine the protection of commercial interests of a natural or legal person, including intellectual property.

As the type of information disclosed is mostly in the context of contract implementation, such as the weekly reports (containing technical information, information relating to methodologies, know-how, specific pricing or any other information carrying a commercial value), disclosure to the general public, including a potential competitor on the market, of such information relating to the execution of a service or of an action would undermine the protection of the relevant legal person’s expertise, strategy and creativity and thus their commercial strength. Therefore, all related information falling under this exception shall be protected as it is very likely that disclosure of it would be liable to actually undermine the interest protected by the exception in question.

Besides the above, we have also identified the documents in the Enclosures as containing “operational data”.

In the context where EMSA facilitates usage of RPAS services for other users based on specific requests (please refer to the procurement documents of EMSA/OP/01/2016 on eTendering website), all data pertaining to specific operations exchanged between our contractor and the requestors, belongs exclusively to the requestors seeing it’s “operational data” and it’s for each specific requestor to qualify it in line with the specificities of their operations. Therefore, for any operational data please refer to the requestors of the services (e.g. Icelandic Coast Guard and Frontex).

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However, seeing that some of the information pertaining to these operations is summarized in the weekly reports we receive from our contractor CEIIA, for the documents in Enclosures 4 and 5, the relevant third parties (e.g. Icelandic Coast Guard and Frontex) were consulted in line with the provisions of Article 4.4 of the Regulation.

The exceptions raised by them for the operational data are as follows:

Operational data of Icelandic Coast Guard falls under exceptions of Article 4(1)(b) (disclosure would undermine privacy and integrity of the individual) and 4(2) first indent (disclosure would undermine the commercial interest of a natural or legal person, including intellectual property), as justified above.

Operational data of Frontex falls under Article 4(1)(a) first indent of Regulation (EC) 1049/2001 (public security) and Article 4 (1) (b) (disclosure would undermine privacy and integrity of the individual – as justified above).

Namely, the information contained in these documents is indicative of the number and profiles of officers deployed in the operational area. Disclosing such information would be tantamount to disclosing the weaknesses and strengths of operations and pose a risk to their security. As a result, the course of ongoing and future similar operations would be hampered, ultimately defeating their purpose to counter and prevent cross-border crime and unauthorized border crossings. Consequently, the disclosure of such information would undermine the protection of the public interest as regards public security as laid down Article 4(1)(a) first indent of Regulation (EC) 1049/2001.

The information contained in these documents refers to technical equipment deployed in the operational area. Disclosing such information would be tantamount to disclosing the exact type and capabilities of the equipment and permit conclusions regarding its usual position. This would open way for abuse, as numbers and types of equipment used in previous operations are indicative of similar numbers and types for succeeding years. Releasing such information would benefit terrorist organizations and criminal networks, enabling them to change their modus operandi and consequently result in hampering the course of ongoing and future similar operations. This would ultimately obstruct the purpose of such operations: to counter and prevent cross-border crime and unauthorized border crossings. In this light, the disclosure of information regarding the technical equipment deployed would undermine the protection of the public interest as regards public security in the sense of Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.

The information contained in the documents refer to details of the operational area and cannot be released. As ongoing operations tend to cover similar operational areas as the operations conducted in preceding years, disclosing such details of previous operational areas would be tantamount to disclosing the current operational areas. This would provide terrorist organizations as well as smuggling and other criminal networks with intelligence enabling them to change their modus operandi which would ultimately put the life of migrants in danger. Consequently, the course of ongoing and future similar operations would be hampered by depriving the operations of any strategy and element of surprise, ultimately defeating their purpose to counter and prevent cross-border crime and unauthorized border crossings. In this light, the disclosure of documents containing such information would undermine the protection of the public interest as regards public security in the sense of Article 4(1)(a) first indent of Regulation (EC) No 1049/2001.
Given the above and after careful consideration and individual assessment of the weekly reports, we have reached the conclusion that almost all content needs to be retracted as falling under the exceptions raised above.

It is considered that a partial release of the weekly reports could not be undertaken as the redacting would be disproportional in relation to the parts that are eligible for disclosure, simultaneously undermining the principle of sound administration. More specifically, the administrative burden necessary to identify and redact the releasable materials would be disproportionate to the public interest in the disclosure exercise itself, while the released documents would not convey any informative value due to their significantly reduced form. Consequently, the partial disclosure of the document(s) at issue – weekly reports, must be refused owing to the particular circumstances of the present case.

However, in order to substantiate the above, you may find an example of a weekly report in Enclosure 3.

Note that the information contained in all documents in the Enclosures, identified as falling under the above-mentioned exceptions has been retracted and only the content not falling under any of the exceptions of the Regulation was disclosed.

Furthermore, a separate assessment of the application for access to documents was performed in order to assess if there is an overriding public interest in disclosure that would justify non-application of the exceptions. With regards to this aspect, it was found that there is no overriding interest at stake as to justify public disclosure overriding the mentioned exceptions.

Note that, in line with Article 7(2) of Regulation (EC) No.1049/2001 of the European Parliament and of the Council regarding public access to documents, you may file a confirmatory application within 15 working days of receiving this email.

I remain at your disposal for further clarifications.

Yours sincerely,

TASSONI Andraa
Access to Documents Coordinator

Annexes

Enclosure No.1:

1. IAI letter 15 May 2018;
2. Three clarification letters (25 May, 13 and 28 June 2018) by EMSA;
3. Three response letters (29 May, 18 June and 1 July 2018) by CEIIA.

Enclosure No.2:
1. Award letter dated 24/7/2018;
2. Letter by EMSA dated 27 September 2018 and documents related to the Initial Configuration Test

Enclosure No.3: Kick off meeting
1. Agenda and Minutes of the Kick off meeting;
2. Presentation by CEIIA;
3. Presentation by EMSA;
4. Presentation by Elbit.
5. Template/ sample of weekly report

Enclosure No.4: Mobilisation and operations in Iceland
1. Mobilisation Notice by EMSA dated 5 December 2018;
2. Reply letter by CEIIA dated 11 December 2018;
3. Letter by EMSA with provision of signed specific contract No2 dated 12 December 2018 and Form 002 RPAS Operational Service Outline;
4. Site survey Iceland;
5. Letter by EMSA for operations dated 15 February 2019;
6. Letter by EMSA with provision of signed specific contract No3 dated 15 March 2019
7. Letter by EMSA with Contract amendment no1 dated 7 June 2019;
8. Letter by EMSA with Contract amendment no2 dated 17 July 2019;

Enclosure No.5: Mobilisation and operations in Greece
1. Mobilisation Alert by EMSA dated 15 February 2019;
2. Signed specific contract No4 dated 8 April 2019 and Form 001 RPAS Initial Service Request Form;
3. Letter by EMSA with Contract amendment No1 dated 7 June 2019
4. Letter by EMSA for operations dated 14 August 2019;
5. Letter by EMSA with provision of signed specific contract No5 dated 22 August 2019