



EUROPEAN COMMISSION
DIRECTORATE-GENERAL MIGRATION and HOME AFFAIRS

Head of Unit C.1
Irregular migration and return policy

Brussels, 24/05/2018
HOME/C1/MD

Mrs IZUZQUIZA Luisa
Access Info Europe
Email: ask+request-1558-e175a1ea@asktheeu.org

Subject: Your request to access to documents - GestDem 2018/1826

Dear Ms Izuzquiza,

This message is in response to your request of access to documents on "Correspondence regarding Proactiva Open Arms", submitted on 20 March 2018.

We first acknowledged receipt and registered your request on 28 March (Ref. Ares(2018)1707659), subsequently indicating to you via e-mail (Ref. Ares(2018)2033448) our need to extend the time limit for our reply by 15 working days, in accordance with Article 7(3) of Regulation (EC) No 1049/2001 regarding public access to documents.

We note that you asked for documents within the period "from Wednesday 14 March to date". Accordingly, we considered that the period mentioned by you covered the days between 14 to 20 March. However, considering that some documents slightly posterior to 20 March relate to the matter at stake and seem therefore pertinent to your request, we have included them in the list of the documents annexed to this message.

We understand that you are interested in DG HOME documents that would relate to the NGO Proactiva Open Arms, the seizure of the vessel and the ongoing criminal investigations opened by the Catania public prosecutor's office, including also possible correspondence with external bodies, namely the Catania prosecutor's office, the Italian Ministry of Interior, the Spanish Ministry of Foreign Affairs, the Barcelona City Hall, the European External Action Service (EEAS) and the European Border and Coast Guard agency (EBCGA).

In this respect, despite not specified in your request to DG HOME, we also took note of the fact that you sent a parallel request of access to documents to the EEAS. This reply relates only to the documents held by DG HOME.

While the European Commission has no direct competence in matters of search and rescue at sea performed by third parties, which remain within the remit of the competent national authorities coordinating the search and rescue events, we have identified a number of documents pertinent to your request.

Having examined all documents under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that they may be partially disclosed.

All documents except one (Document 11) that we identified as pertinent to your request contain personal data which have been redacted.

Pursuant to Article 4(1) (b) of Regulation (EC) No 1049/2001, access to a document has to be refused if its 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. The applicable legislation in this field is Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data. When access is requested to documents containing personal data, Regulation (EC) No 45/2001 becomes fully applicable.

According to Article 8(b) of this Regulation, personal data shall only be transferred to recipients if they establish the necessity of having the data transferred to them and if there is no reason to assume that the legitimate rights of the persons concerned might be prejudiced. We consider that, with the information available, the necessity of disclosing the aforementioned personal data to you has not been established and/or that it cannot be assumed that such disclosure would not prejudice the legitimate rights of the persons concerned. Therefore, we are disclosing a version of the documents requested in which these personal data have been redacted.

Furthermore, some parts of other documents (Documents 2 to 8) have been redacted as they are out of the scope of your request.

For ease of reference, the documents are recalled below and you will find them annexed to this letter:

Document 1): Flash report of a meeting with the NGO Proactiva Open Arms, which took place on 27th March 2018 in Brussels (Ref Ares(2018)2572797). Please note that this document was drawn up for internal use under the responsibility of the relevant services of the Directorate-General HOME. As such, it solely reflects the services' interpretation of the interventions made and does not set out any official position of the third parties to which the document refers, which were not consulted on its content.

Document 2), 3) and 4): Relevant excerpts from the minutes of three internal coordination meetings held on 20th (Ref. Ares(2018)2573122), 21st (Ref. Ares(2018)1585554 and 27th March 2018 (Ref. Ares(2018)2573122) and addressing issues linked to the Central Mediterranean and Italy, where the topics mentioned in the request were raised. Please note these are internal working documents, not formally adopted by the Commission. They cannot be quoted as reflecting the Commission's position and cannot be reproduced or disseminated for commercial purposes without prior consent given by the Commission.

In addition, despite being posterior to the timeframe identified in the request, the following documents appear relevant to the issues raised and I have therefore chosen to also share them with you:

Documents 5), 6), 7) and 8): Relevant excerpts from the minutes of four more internal coordination meetings, held on 6th (Ref. Ares(2018)2557187), 10th (Ref. Ares(2018)2573122), 17th (Ref. Ares(2018)2573122) and 19th April 2018 (Ref. Ares(2018)2099546) addressing issues linked to the Central Mediterranean and Italy, where the topics mentioned in the request were raised. Please note these are internal working documents, not formally adopted by the Commission. They cannot be quoted as reflecting the Commission's position and cannot be reproduced or disseminated for commercial purposes without prior consent given by the Commission.

Documents 9a) and 9b): Correspondence and letter from the NGO Médecins sans Frontières (MSF) (Ref. Ares(2018)1778850 - 03/04/2018). Please note that the documents received by the Commission from third parties are disclosed for information only and cannot be re-used without the agreement of the originator, who holds a copyright on it. They do not reflect the position of the Commission and cannot be quoted as such.

Document 9c): Reply sent by DG HOME to such letter, in relation –among others- to the matter at stake (Ref. Ares(2018)2442202 - 08/05/2018). You may reuse the document free of charge for non-commercial and commercial purposes, provided that the source is acknowledged, that you do not distort the original meaning or message of the document. Please note that the Commission does not assume liability stemming from the re-use.

Document 10): Flash report of a meeting with the NGO MSF (Ref. Ares(2018)2573122), which took place on 6 April 2017. Please note that this document was drawn up for internal use under the responsibility of the relevant services of the Directorate-General HOME. As such, it solely reflects the services interpretation of the interventions made and does not set out any official position of the third parties to which the document refers, which was not consulted on its content.

Furthermore, please find enclosed a Written Question sent to the Commission by a group of Members of the European Parliament on the same issue (**Document 11**) – (Ref. Ares (2018)2577499). DG HOME received it on 5 April 2018. The reply is currently being finalised and will be publicly available.

Finally, we would like to inform you that a number of press articles and open source material, such as those identified by our internal Press Review services, was circulated to DG HOME staff. Examples include:

<https://www.ilpost.it/2018/03/19/open-arms-migranti-sequestro-nave/>

http://www.ansa.it/sito/notizie/topnews/2018/03/18/sequestrata-nave-ong-spagnola-proactiva_17aabcd6-04f5-437f-9405-38c42e79c553.html

http://palermo.repubblica.it/cronaca/2018/04/16/news/migranti_il_gip_di_ragusa_dissequestra_la_nave_proactiva_open_arms-194015345/

<https://www.newsdeeply.com/refugees/community/2018/03/27/how-italys-ngo-boat-seizure-exposes-europes-dangerous-policy-at-sea>

In case you would disagree with the assessment that the redacted data are personal data which can only be disclosed if such disclosure is legitimate under the applicable rules on the protection of personal data, you are entitled, in accordance with Article 7(2) of Regulation 1049/2001, to make a confirmatory application requesting the Commission to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Secretary-General of the Commission at the following address:

European Commission

Secretary-General

Transparency unit SG-B-4

BERL 5/288

B-1049 Bruxelles or by email to: sg-acc-doc@ec.europa.eu

Yours faithfully,

E-signed
Dragos TUDORACHE

Enclosures: 13 Documents as mentioned above