



Decision in case 773/2018/PL on how the European Union Aviation Safety Agency conducted a consultation on drones

Decision

Case 773/2018/PL - Opened on 17/05/2018 - Decision on 29/11/2019 - Institution concerned European Union Aviation Safety Agency (No maladministration found) |

The case concerned the way in which the European Union Aviation Safety Agency (EASA) carried out a public consultation. The Ombudsman's inquiry covered (i) the fact that the consultation was in English only, (ii) EASA's web-based application to submit comments and (iii) the amount of time stakeholders had to submit comments.

The Ombudsman concluded that citizens who do not speak English were hindered from contributing meaningfully to the consultation. She therefore made a suggestion to EASA to review its practice.

At the same time, the Ombudsman found EASA's system for submitting comments to be reasonably user-friendly and the amount of time stakeholders had to submit comments to be sufficient. The Ombudsman thus closed the case.

Background to the complaint

1. Before 2018, it was largely for EU Member States to regulate drones [1] . In 2018, this situation changed. Drones would largely be regulated on the basis of EU rules [2] .
2. Anticipating the regulatory regime change, the European Union Aviation Safety Agency (EASA) conducted, in 2017, a public consultation (so-called Notice of Proposed Amendment, 'NPA' [3]) on draft regulations to be adopted by the European Commission on drones. From May to September 2017, interested parties could comment on the NPA through EASA's web-based application called its Comment Response Tool (CRT). The documents of the NPA were available in English.
3. The complainant was the Austrian model aircraft association. It complained to EASA about the Comment Response Tool and the fact that the NPA documents were in English only. It also found the amount of time available for submitting comments to be too short. EASA replied to the complainant dismissing its concerns.
4. The complainant turned to the Ombudsman in April 2018.
The inquiry
5. The Ombudsman opened an inquiry into i) the fact that the consultation was carried out in



English only; ii) EASA's use of the web-based application to submit comments; and iii) the time given for submitting comments.

Language used in the consultation

Arguments presented to the Ombudsman

6. The complainant said that EASA should not have carried out the public consultation in English only. In addition, EASA translated the executive summary of the NPA, which the complainant contended was not an adequate account of the full English text, only on demand and under certain conditions. Since the CRT allowed comments on the full English text only, comments from those who don't speak English were effectively excluded. The complainant concluded that EASA's approach did not encourage debate and citizen participation.
7. EASA said that the EU has an obligation to make efficient use of its limited resources. In order to strike the right balance, the EU legislator and EASA had established legal obligations, procedures and technical tools tailored to EASA's specific role within the EU's broader legislative process. EASA's procedures allow for the participation and consultation of citizens at an early stage. By way of example, EASA organised a public workshop for this NPA.
8. EASA noted that translating the NPAs at issue would lead to very high costs (82€ per page and language) and a delay of approximately 100 working days for a 300 page document. Given their technical nature, shortening the NPAs to allow for their translation would not be possible.
9. EASA also said that its role within the legislative process is limited to delivering opinions to the Commission, sometimes accompanied by draft regulations. In this case, the Commission subsequently carried out a public consultation in all official languages except Irish [4] . EASA considered that this co-ordinated process with the Commission struck an appropriate balance.
10. EASA also said that citizens have the right to request a translation of the NPA executive summary within three weeks of the publication of the NPA. This allows citizens enough time to place comments after receiving the translation.
11. EASA clarified that stakeholders may submit their comments to an NPA via email or post in any official language of the EU, when they have problems with the CRT, including a language barrier.
12. EASA concluded that the way it had carried out the consultation on the NPA was appropriate when one takes into account EASA's limited role within the legislative process and the principles of proportionality and efficiency.

The Ombudsman's assessment



- 13.** The Ombudsman's view is that where an EU institution or agency carries out a public consultation, it should, as a matter of principle, aim to make the documentation available in all EU official languages at the beginning of the consultation process. [5] If citizens cannot understand documents on which they are invited to comment, they may doubt the usefulness of the exercise and question whether or not the administration is sincere in its efforts to consult the public.
- 14.** Language restrictions may prove necessary in certain circumstances. There may be cases where it is appropriate for a specialised EU agency, such as EASA, to carry out a consultation in fewer or indeed only one language. Those restrictions should however be objectively justified, reasonable and proportionate to the aim pursued.
- 15.** The question for the Ombudsman in this case is whether EASA's exclusive use of English in its consultation was justified, reasonable and proportionate to the aim pursued. For this, one must take into account who is concerned by the consultation.
- 16.** The consultation documents at issue stated that the affected stakeholders were, amongst others, the general public and model aircraft associations [6] . The consultation documents were to a large extent of a technical nature but also noted that the proposed rules should contribute to the respect of privacy, family life, data protection rights and the environment - matters that would appear to concern a wider public [7] .
- 17.** Despite targeting the general public, the consultation documents, the CRT and its user guide were all in English only. The introductory page to the CRT, also in English only, mentioned the possibility for stakeholders to request a translation of the executive summary of the NPA under certain conditions. The CRT website did not mention the possibility to submit comments in any other official language of the EU.
- 18.** The Ombudsman is not convinced that the way EASA carried out the public consultation allowed citizens who do not speak English to contribute meaningfully to the public consultation.
- 19.** First, although EASA offered translations of the executive summary of the consultation documents, the summary was very short and could not be seen as a genuine overview of the documents. In this case, the executive summary was less than one page and purported to reflect over 250 pages.
- 20.** Second, translations were provided upon request only, within three weeks of publication, to stakeholders who gave reasons for asking, and depending on the available resources for translation. Such a conditional offer can hardly be seen as reassuring for citizens who do not speak English.
- 21.** Third, the CRT is designed in such a way that stakeholders can comment on sections of the full text of an NPA. This means, however, that when stakeholders rely on the translated executive summary of the NPA, using the CRT is difficult. This is particularly true given that



the user guide of the CRT is also available in English only. Translating the user guide of the CRT, which is technical and comprises around a dozen pages, would help citizens who do not speak English to submit their contributions.

22. EASA said that stakeholders with non-technical problems with the CRT, such as language issues, could send their comments via email or by post and do so in any official language of the EU. However, this was not stated in the consultation nor is it mentioned in the CRT. As a result, citizens were not aware of this possibility. EASA should indicate this possibility clearly in its consultations, regardless of whether stakeholders send their contributions via the CRT, email or post.

23. These shortcomings cannot be justified by the fact that the consultation documents were to a large extent technical, particularly given that the consultation was addressed to the general public.

24. As to EASA's role in the decision-making process, the EU legislator has clearly foreseen a role for EASA in this process [8] , and EASA's own internal rules commendably foresee that proposed rules shall be put out for public consultation [9] . If an EU body consults the general public, it must be because it considers that the public should be consulted, regardless of its 'limited' role. The 'limited' role cannot justify only a subset of the general public, namely the English-speaking subset, being in a position to make a meaningful contribution.

25. The same applies to EASA's argument that the shortcomings are mitigated by the subsequent, public consultation carried out by the Commission in all languages except Irish. It is unclear whether EASA knew, at the time it carried out its consultation, of the extent of the Commission's future public consultation and if it would be translated. In fact, the consultation subsequently carried out by the Commission was limited to very few general questions [10] , and was not in any way comparable to EASA's NPA. Moreover, although the Commission translated the general information underpinning the consultation into most official EU languages, the questionnaire was in English only.

26. The Ombudsman further draws EASA's attention to the negative consequences for other EU languages where one language, in this case English, is given a privileged position in a particular domain. All EU institutions, agencies and bodies need to be alert to the 'self-fulfilling prophecy' of English increasingly being used because of a belief that it has become the dominant language in a particular field, thus weakening the case even further for using other EU languages.

27. Despite the shortcomings identified above, the Ombudsman acknowledges that EASA has engaged extensively with stakeholders on the matter of drones. Its first public consultation on drones, carried out in 2015 - 'Advanced NPA 2015-10', contained a very extensive summary in all languages, except Irish, and EASA received around 1 000 comments from model aircraft practitioners. These comments were taken into account when EASA conducted the public consultation on this NPA, in response to which it received around 3 700 comments - many of which came from the general public and model aircraft practitioners.



28. EASA has also engaged positively with the Ombudsman in her inquiry [11] and, more generally, on her draft guidelines on the use of languages by all EU authorities when communicating with the public. The Ombudsman trusts that EASA will review its practice, taking into account the observations made above.

29. Against this background, the Ombudsman takes the view that no further inquiries are justified. She will however set out a suggestion for improvement to EASA below.

Web-based Application (Comments Response Tool-CRT)

Arguments presented to the Ombudsman

30. The complainant considered the application to send comments, the so-called CRT, difficult to use. EASA disagreed, arguing that the CRT was a user-friendly tool that allowed it to process comments more efficiently. It noted that in the event of technical problems, comments could also be sent via e-mail or letter.

The Ombudsman' assessment

31. The Ombudsman's inquiry team tested EASA's CRT and found it to be a web-based application that is reasonably simple to use. The tool gives stakeholders access to all documents of the NPA and a list of sections on which they can place comments. These comments can always be added, edited or deleted while the consultation is ongoing. The CRT has a detailed user guide [12] that clearly describes the process and gives a full explanation of the software needed to use the tool. The CRT also gives users the possibility of sending their comments via email or by post [13] when they have a problem.

32. The Ombudsman finds that EASA's preference that stakeholders use its web-based application to submit comments is not, in itself, problematic. It is apparent that this system allows EASA to streamline the assessment of the contributions and improves its efficiency. EASA should remain flexible however, in accepting contributions submitted by other means, particularly taking into account that the CRT presents a number of challenges for stakeholders who do not speak English.

Time given for submitting comments

Arguments presented to the Ombudsman

33. The complainant considered that EASA had not given sufficient time to send contributions. EASA pointed out that three months is the standard consultation period not only for its NPAs but also for the Commission's legislative proposals. In this case the consultation was even extended by an additional month.



The Ombudsman's assessment

34. EASA's standard consultation time on NPAs appears to be three months. In this case, it was extended by a fourth month.

35. As EASA noted, this is in line with the Commission's practices in its public consultations. In fact, depending on the stage of the policy or the law-making cycle, the Commission may even give four weeks only for citizens and stakeholders to submit their views.

36. In light of this, the Ombudsman finds the time EASA gave in this case sufficient for stakeholders to contribute.

Conclusion

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

While the Ombudsman finds that the way the European Union Aviation Safety Agency carried out the public consultation in this case hindered citizens who do not speak English from contributing meaningfully, she concludes that no further inquiries are justified at this stage.

Concerning the European Union Aviation Safety Agency's web based application for submitting comments on the public consultation and the time the public was given for doing so, there was no maladministration.

Suggestion for improvement

The Ombudsman invites the European Union Aviation Safety Agency to review its practice in light of this decision.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 29/11/2019

[1] Otherwise referred to as unmanned aircraft systems (UAS).

[2] Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency (EASA 'Basic Regulation').



[3] NPA 2017-05 "Introduction of a regulatory framework for the operation of drones — Unmanned aircraft system operations in the open and specific category". Available at: <https://www.easa.europa.eu/document-library/notices-of-proposed-amendment/npa-2017-05>

[4] Public consultation on drones (unmanned aircraft) – technical standards for drones as a product and conditions for drone operations. Available at: https://ec.europa.eu/info/consultations/2018-drones_en

[5] See, for instance, the Ombudsman's decision in case 640/2011/AN, paragraph 69, available at: <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/12009/html.bookmark>

[6] A review of 15 other EASA NPAs shows that none of them targeted the general public or model aircraft associations. This consultation seems to have been an exception.

[7] NPA 2017-05 A, point 2.3.1.4 reads: *"Furthermore, the NPA addresses security and privacy risks. The need to contribute to the mitigation of these risks has been disputed as some stakeholders strongly believed that the NPA should deal with safety issues only. However, Recital 19 of the new Basic Regulation indicates that UAS rules should contribute as much as possible to respecting the right to privacy and family life. The essential requirements of said Regulation for UAS also refer to privacy and environment."*

[8] See for instance Articles 75 and 76 of the EASA Basic Regulation. Article 75 provides that EASA shall *"assist the Commission by preparing measures to be taken under this Regulation. Where those measures comprise technical rules, the Commission may not change their content without prior coordination with EASA"*. Article 76 provides that EASA *"shall, upon request, assist the Commission in the preparation of proposals for amendments to this Regulation and of delegated and implementing acts to be adopted on the basis of this Regulation ..."*.

[9] Management Board Decision 18-2015, of 15 December 2015, available at: <https://www.easa.europa.eu/sites/default/files/dfu/EASA%20MB%20Decision%2018-2015%20on%20Rule>

[10] Questionnaire on Public consultation on drones (unmanned aircraft) – technical standards for drones as a product and conditions for drone operations <https://ec.europa.eu/transport/sites/transport/files/2018drones.pdf>

[11] Strategic inquiry SI/98/2018.

[12] Available at: https://hub.easa.europa.eu/crt/_static/help/easa_crt_commentator_guide.pdf

[13] The CRT's homepage reads: *"Should you have any (e.g. technical) problems, please report them to our webmaster and send your comments by email or by post instead."*