

Decision of the European Ombudsman closing the inquiry into complaint 1174/2011/MMN against EASA

Decision

Case 1174/2011/OV - Opened on 30/06/2011 - Recommendation on 17/01/2014 - Decision on 17/06/2014 - Institution concerned European Union Aviation Safety Agency (Draft recommendation accepted by the institution) |

The case concerned the refusal by the European Aviation Safety Agency ('EASA') to grant access to documents (namely, (i) EASA's surveillance plans and (ii) EASA's approval recommendation reports) regarding four aircraft maintenance service providers established in Asia. The Ombudsman inquired into the issue and found that EASA's reliance on the protection of commercial interests and the protection of the purpose of inspections, investigations, and audits was not convincing. Following a draft recommendation from the Ombudsman, EASA decided to release the requested documents.

The background

1. This case concerns the refusal of the European Aviation Safety Agency ('EASA') to grant access to certain documents regarding four aircraft maintenance service providers established in Asia.
2. One of EASA's responsibilities is to approve organisations, such as the four organisations concerned in this case, involved in the maintenance of aeronautical products located outside the territory of the Member States. If EASA concludes that an organisation complies with the applicable requirements, it issues an approval certificate. All approved organisations are subject to surveillance by EASA in order to ensure that they continue to comply with the applicable requirements. Every 24 months, the auditors prepare an 'approval recommendation report' which contains the findings of the surveillance activities and the relevant recommendations concerning EASA's approval.
3. In 2010, EASA rejected an application for access to documents made by an association of aircraft engineers (the 'complainant').
4. Afterwards, the complainant made a confirmatory application for access to: (i) EASA's surveillance plans relating to the relevant four aircraft maintenance service providers; and (ii)



EASA's approval recommendation reports relating to these four providers.

5. EASA rejected the confirmatory application on the basis of Regulation 1049/2001 regarding public access to documents [1] ('Regulation 1049/2001'). In particular, EASA based its decision on the protection of the purpose of inspections, investigations and audits (the third indent of Article 4(2)) and on the protection of commercial interests (the first indent of Article 4(2)).

6. In May 2011, the complainant lodged the present complaint with the European Ombudsman [2] .

Allegation of refusal to grant access to documents

The Ombudsman's friendly solution proposal

7. Having taken into account the arguments and opinions put forward by the parties, the Ombudsman inspected the documents in EASA's file. Subsequently , the Ombudsman decided to make a friendly solution proposal.

8. The Ombudsman noted that Regulation 1049/2001 establishes the principle of public access to all documents held by the institutions, unless the institution to which a request for access is submitted can show that one of the exceptions set out in Articles 4(1) to (3) of the Regulation applies. Moreover, since they derogate from the principle of the widest possible public access to documents, the exceptions to the right of access must be interpreted and applied strictly [3] .

9. The Ombudsman took the preliminary view that, contrary to EASA's opinion, it was not entitled to invoke the exception concerning the protection of commercial interests in refusing to give at least partial access to (ii) its approval recommendation reports. In particular, EASA could delete the information that could be regarded as commercially sensitive, such as for instance the names of customers and of certain aircraft manufacturers.

10. As regards the protection of the purpose of inspections, investigations and audits , the Ombudsman took the preliminary view that this exception could not justify the refusal to grant access to (i) the surveillance plans to third parties. In particular, the surveillance plans were disclosed in advance to the organisations concerned. Therefore, they did not concern 'unannounced inspections' which, by definition, must be kept secret before they take place if their purpose is not to be undermined.

11. Moreover, as regards (ii) the approval recommendation reports, the Ombudsman considered that EASA had a legitimate interest in receiving from the inspected organisations all the information it needed to fulfil its tasks. Therefore, the inspected organisations' cooperation was certainly useful or even necessary. However, the 'mutual trust' to which EASA referred could not derive from the assumption that the information obtained from the organisations, which might reveal safety issues, would remain secret for an indefinite period of time.



Furthermore, the Ombudsman noted that, as acknowledged by the agency itself, the inspected organisations had the legal obligation to be transparent towards EASA.

12. In view of the foregoing, the Ombudsman made the following proposal for a friendly solution:

" Taking into account the Ombudsman's findings, EASA could consider granting full access to (i) the surveillance plans. Moreover, EASA could consider granting full or at least partial access to (ii) the approval recommendation reports, without prejudice to the possibility of refusing disclosure of any commercially sensitive information. "

13. In its reply to the friendly solution proposal, EASA expressed its commitment to giving the fullest effect possible to the right of access to documents established by Regulation 1049/2001. However, after having analysed the Ombudsman's friendly solution proposal, EASA said that it could not accept it. It repeated its view that the requested documents were covered by the above-mentioned exceptions of Regulation 1049/2001.

14. The complainant expressed its dissatisfaction with EASA's reply.

The Ombudsman's draft recommendation

15. When addressing the draft recommendation to EASA, the Ombudsman took into account the arguments and opinions put forward by the parties. Thus, the Ombudsman made the following draft recommendation to EASA:

" EASA should grant full access to (i) the surveillance plans, and full or at least partial access to (ii) the approval recommendation reports. "

16. In its detailed opinion, EASA informed the Ombudsman that it had decided to accept the draft recommendation. Thus, EASA announced that it would grant full access to (i) the surveillance plans and partial access to (ii) the approval recommendation reports in those cases where, at the relevant time, there was no ongoing discussion between EASA and the provider about outstanding issues.

17. The complainant did not submit any further observations.

18. The Ombudsman wishes to commend EASA for having agreed to change its position and to accept her draft recommendation in order to promote even greater transparency. Having regard to the fact that the complainant has not submitted any further observations, the Ombudsman understands that this outcome is satisfactory for the complainant. Thus, the Ombudsman has decided to close the present inquiry.

Conclusion



On the basis of the inquiry into this complaint, the Ombudsman closes it with the following conclusion:

EASA has accepted the Ombudsman's draft recommendation.

The complainant and EASA will be informed of this decision.

Emily O'Reilly

Done in Strasbourg on 17 June 2014

[1] 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 2001 L 145 p. 43.

[2] For further information on the background to the complaint, the parties' arguments and the Ombudsman's inquiry, please refer to the full text of the Ombudsman's draft recommendation available at:

<http://www.ombudsman.europa.eu/cases/draftrecommendation.faces/en/53185/html.bookmark>
[Link]

[3] See Case T-344/08 *EnBW Energie Baden-Württemberg v Commission*, judgment of 22 May 2012, not yet published in the ECR, paragraph 41.