

## Decision of the European Ombudsman closing the inquiry into complaint 726/2012/(RA)FOR against the European Aviation Safety Agency (EASA)

Decision

**Case** 726/2012/FOR - **Opened on** 22/05/2012 - **Recommendation on** 17/12/2013 -

**Decision on** 06/08/2014 - **Institution concerned** European Union Aviation Safety Agency ( Draft recommendation accepted by the institution ) |

The case concerned a failure of EASA to give stakeholders copies of minutes of a meeting of the EASA Advisory Group of National Authorities in which modifications to flight and duty time limitations, and rest requirements for commercial air transport, were discussed.

The Ombudsman inquired into the issue and found that EASA was wrong to withhold access to the minutes. She thus made a draft recommendation that the minutes be released. EASA agreed to release the minutes and committed to ensuring that similar minutes be released in future.

The Ombudsman thus found that EASA had accepted her draft recommendation and she closed the inquiry.

### The background to the complaint

1. The complaint, submitted by Ryanair, concerns the allegedly non-transparent manner in which the European Aviation Safety Agency (EASA) adopted the EASA Opinion of 28 September 2012 on the modification of flight and duty time limitations and rest requirements for commercial air transport [1] . That EASA Opinion was used by the European Commission in the context of its deliberations leading to a proposal for a Regulation modifying flight and duty time limitations and rest requirements for commercial air transport.

2. The EASA Opinion was finalised after a public consultation, in the context of which EASA created a stakeholder group. Ryanair, along with other airlines, was a member of this stakeholder group. As a general rule, EASA kept the stakeholder group updated on its work by, for example, providing the stakeholder group with copies of the minutes of meetings of the EASA Advisory Group of National Authorities. However, according to the complainant, one vital meeting of that Advisory Group, held on 26 October 2011, was not minuted. The stakeholder



group was therefore not informed of the issues discussed in that Advisory Group meeting. The complainant argued that the issues discussed in the October 2011 meeting were determinative as regards the content of the subsequent EASA Opinion. The complainant thus argued that, as the process leading to the EASA Opinion should have been more transparent, that process lacked legitimacy.

3. After a series of contacts with EASA, the complainant turned to the European Ombudsman.

## **The inquiry**

4. The complainant alleged that EASA's rulemaking process to update flight and duty time limitations and rest requirements for commercial air transport was not transparent.

5. The complainant claimed that EASA should revoke its Comment Response Document, as published in January 2012 and, after conducting an evaluation of the relevant rules based on scientific and medical evidence, resubmit a revised Comment Response Document, if any, to the European Commission.

6. In the course of the inquiry, the Ombudsman received the opinion of EASA on the complaint and, subsequently, the comments of the complainant in response to EASA's opinion. Her services also carried out an inspection of the EASA's file concerning the present case. In conducting the inquiry, the Ombudsman has taken into account the arguments and opinions put forward by the parties.

## **Allegation of lack of transparency**

### **Arguments presented to the Ombudsman**

7. The initial arguments presented to the Ombudsman by EASA and the complainant are set out in the Draft Recommendation of the Ombudsman of 17 December 2013. [2]

### **The Ombudsman's assessment leading to a Draft Recommendation**

8. In summary, the Ombudsman considered that the public interest is best served by making publicly accessible as much information as possible pertaining to EASA's rulemaking processes. She underlined that such openness allows citizens to scrutinise all the relevant information which is used in the formulation of future legislative acts. Citizens are thus given the knowledge and understanding necessary to contribute to informed public debate on the various considerations underpinning new legislation. This leads to better legislative outcomes. It also enhances the democratic legitimacy of the legislation.



9. The Ombudsman noted that EASA does agree that EASA should act transparently. The Ombudsman commended EASA for taking this general approach. However, she noted, the present inquiry sought to determine whether these high standards were maintained in the case at hand. She found that no official minutes were taken of the Advisory Group meeting held on 26 October 2011. However, she also noted that the EASA staff present at the meeting had taken detailed personal minutes at the meeting. These were used, on 27 October 2011, to produce a consolidated summary of the meeting. That summary had not yet been released by EASA. The Ombudsman thus issued the following draft recommendation.

**EASA should publicly disclose the consolidated summary of the meeting of the Advisory Group of National Authorities.**

**EASA should, with a view to assisting interested parties fully to understand and participate in its decision-making process, in future, produce official minutes of meetings, such as the meeting at issue in this case .**

## Arguments presented to the Ombudsman after the Draft Recommendation

10. EASA states that it accepts the Ombudsman's draft recommendation. In this context, EASA also expresses its satisfaction that the Ombudsman has recognised that EASA attaches great importance to transparency and the input of civil society stakeholders into its rulemaking process. The fact that the Ombudsman praises EASA for its level of engagement and openness in its rulemaking process is an additional incentive for the EASA to continue to maintain the highest standards in the conduct of its work.

11. EASA also insisted that the meeting of 26 October 2011 was not recorded in official minutes at the request of the Member States, in order to allow the State representatives to have an open discussion on sensitive issues and to progress in a constructive way. EASA also insists that no agreements or decisions were reached at this meeting. However, EASA understands that not releasing an account of the may have caused the complainant to have less confidence in the rulemaking process in this particular case. This is of course unfortunate as EASA highly values transparency and openness in the rulemaking process. At the same time, EASA wishes to restate that this particular meeting was only one part of a much larger process in the development of the rules in questions, which involved stakeholders - including the complainant - continuously and fully.

12. EASA states that it has implemented the draft recommendation of the Ombudsman by publicly disclosing the consolidated summary of the special meeting prepared by EASA experts and submitted during the Ombudsman's inspection visit. This has been done by adding the consolidated summary to the other documents related to meetings on the public website of EASA, with the indication that the document was produced as the result of the meeting which took place on 26 October 2011.



**13.** Regarding the second part of the Ombudsman recommendation - relating to the publication, in future, of official minutes of EASA advisory bodies - EASA again highlighted that transparency and openness are key principles that it applies to the conduct of its work as a whole, and in particular, to the rulemaking process. As a result, EASA fully subscribes to the Ombudsman's draft recommendation to ensure that, in future, official minutes of meetings of EASA advisory groups, are produced in accordance with its own rulemaking procedure and made public.

**14.** In order to implement the second part of the recommendation, EASA will circulate the Ombudsman's draft recommendation and EASA's opinion in response to all relevant staff members in order to ensure that in future, meetings of EASA advisory bodies are recorded in official minutes, as required in the relevant rules and procedures.

**15.** The complainant, Ryanair, states, in response to the EASA opinion accepting the Ombudsman's draft recommendation, that EASA's self-satisfied claim that "*the Ombudsman has recognised that the Agency attaches great importance to transparency*" is in direct contradiction to the Ombudsman's confirmation that EASA's Flight Time Limitations process was marked by "maladministration". Similarly, EASA's claim that it will "*continue to maintain the highest standards in the conduct of its work*" belies the European Court of Auditors finding that EASA fails to "*adequately manage the conflict of interest situations*" and that EASA fails to "*have an Agency-specific conflict of interest policy and procedures*." In light of EASA's alarming lack of transparency, the complainant states, it is important that the Ombudsman exclude from its final recommendation statements such as "*The Ombudsman strongly commends EASA for [its] general approach [to transparency]*", which were present in the Ombudsman's draft recommendation.

**16.** The complainant insists that EASA has failed to respond to the Ombudsman's finding that there is "*nothing to suggest that the Member States decided not to have minutes of the meeting*", and "*two national authorities even requested copies of the minutes of the meeting*". Instead, EASA maintains its disproven claim that official minutes were not taken at the AGNA meeting "*at the request of the Member States*".

**17.** The complainant disputes the EASA argument that "*no agreements or decisions were reached at this [un-minuted] meeting*". It states, for example, that the rolling 14 day 110 hour duty limit, which was included in EASA's final proposal, comes directly from the un-minuted meeting. EASA's claim is thus untrue.

**18.** The complainant thus confirmed that it has indeed lost confidence in EASA following its obscure process, which was marked by EASA's disregard for stakeholders.

**19.** Finally, although EASA has finally published a summary of the un-minuted meeting (two and a half years after the meeting took place, and after the flight and duty time limitations process was completed, it failed to inform Ryanair of the publication. This further emphasises EASA's un-transparent workings.



**20.** The complainant finally called on the Ombudsman to note and emphasise EASA's opaque actions. We further encourage the Ombudsman to reference EASA's failure to rely on medical and scientific evidence as required by Regulation 216/2008.

## The Ombudsman's assessment

**21.** The Ombudsman notes that the subject matter of the present inquiry was the alleged lack of transparency relating to a specific meeting held at EASA, a meeting which had as its purpose assisting EASA to draft an Opinion on flight and duty time limitations and rest requirements for commercial air transport. The comprehensive minutes of that meeting have now, in response to the draft recommendation of the Ombudsman, now been disclosed.

**22.** The Ombudsman is of the view that EASA should never have withheld access to the said minutes. This failure by EASA was particularly problematic given the obvious need for the public to be reassured that the various processes by which the safety of air travel is ensured (both in terms of EASA's rule-making processes and EASA's processes for the application of those rules) are as perfect as possible. By making its work as transparent as possible, EASA helps to build public trust in its processes. An appropriate level of transparency also serves to ensure that informed stakeholders can bring relevant comments to the attention of EASA, which will serve to improve further the decision-making of EASA.

**23.** The Ombudsman thus welcomes EASA's positive and constructive response to her Draft Recommendation. By publishing the consolidated summary of the meeting in question, and by agreeing to ensure that such meetings will be minuted in future for the purposes of informing stakeholders and the public of the important work of EASA, EASA confirms its commitment to the principle of participatory democracy and engagement with civil society stakeholders. These principles, coupled with the principle of transparency, are a cornerstone of a citizens' EU. The Ombudsman notes, again, that Article 1 of the Treaty on European Union states that this Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and closely as possible to the citizen. These principles, of relevance to all EU institutions, bodies, offices and agencies, are of particular relevance for EASA, since its activities have a direct impact on citizens' lives. Citizens need to trust that they, their families, their friends and their colleagues are safe when they fly. Rest requirements for pilots are an important part of air travel safety. In this context, citizens need to trust that effective rules exist on how much rest pilots are required to take. Such trust can only be built when the process by which such rules are adopted is based on openness and dialogue.

**24.** In light of EASA's agreement to release the minutes at issue, and its agreement to ensure that it will release similar minutes in future, the Ombudsman closes the present inquiry with the following conclusion.



## Conclusion

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

**EASA has agreed to the Ombudsman's Draft Recommendation.**

The complainant and EASA will be informed of this decision.

Emily O'Reilly

Done in Strasbourg on 6 August 2014

[1] Available at

<http://www.easa.europa.eu/agency-measures/docs/opinions/2012/04/EN%20to%20Opinion%2004-2012.pdf>

[Link]

[2] The Draft Recommendation of the Ombudsman is available at:

<http://www.ombudsman.europa.eu/cases/draftrecommendation.faces/en/52883/html.bookmark>

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