

Decision in case 1277/2016/SNA on the European Aviation Safety Agency's alleged refusal to assist the complainant in transferring his flight medical records

Decision

Case 1277/2016/SNA - Opened on 30/09/2016 - Decision on 16/12/2016 - Institution concerned European Union Aviation Safety Agency (No maladministration found) |

The case concerned a pilot wanting to transfer his flight medical records from Germany to the United Kingdom in order to convert his German pilot licence to a United Kingdom issued licence. Due to differences in procedures in the UK and Germany, the complainant did not succeed in having his medical records transferred and he therefore turned to the European Aviation Safety Agency (EASA) to seek assistance. EASA explained that it could not help the complainant, as the matter falls outside the scope of its authority. The Ombudsman inquired into the issue and found that EASA's response to the complainant was entirely reasonable, as the problem was due to German data protection laws. There had therefore been no maladministration by EASA. It was also noted that German pilot licences are valid in the UK and that the complainant should therefore not be prevented from working there.

The background to the complaint

1. In every EU Member State, the respective national aviation authority issues pilot licences according to the standards set by EASA. The complainant, residing in the United Kingdom, has tried to transfer his flight medical records from Germany to the United Kingdom in order to convert his German pilot licence to a United Kingdom issued licence. Due to procedural differences in how the national aviation authorities of these two countries handle licence transfer requests, the complainant has not succeeded in transferring his records.

2. According to the complainant, the **German national aviation authority**, the Luftfahrt Bundesamt, requires that *the treating aero-medical examiner* [1] signs the relevant transfer form to change the licencing EU Member State. However, the **United Kingdom national aviation authority**, the Civil Aviation Authority, requires the signature of *the medical assessor* [2] to process the request for transferring a licence. According to the complainant, the German national aviation authority refused to provide the signature of its medical assessor, explaining that medical assessors do not have free access to the applicant's medical file. According to the complainant, the European Aviation Authorities' Chief Medical Officer's Forum, along with the United Kingdom national aviation authority, is of the view that German licences cannot be



transferred to any other national aviation authority because the medical assessor's signature cannot be obtained.

3. The complainant tried to resolve this matter by asking the chief medical officers of the national aviation authorities in Germany and in the United Kingdom to communicate with one another on the issue of the signature, but they refused to do so.

4. In July 2016, the complainant therefore contacted EASA to seek help in resolving the issue. He stated that in respect of the transfer of medical records the "*situation has now changed slightly with new legislation, such that from 03/07/2016 onwards the [German national aviation authority] will create a centralised medical database [3] , but as this does not apply retrospectively it does not change the situation in [the complainant's] case.*" The complainant therefore stated: "*I believe **EASA as the supranational authority must intervene in this case and lay down the law** as to what the Germans must provide and what the British must accept for a transfer of medical records.*" (emphasis added)

EASA replied to the complainant, explaining why it could not intervene. EASA stated in particular that:

"The European Aviation Safety Agency (EASA) is governed by Regulation (EC) 216/2008 which sets out the tasks and responsibilities of the Agency.

Our task concerning rulemaking is to assist the European Commission in the adoption of implementing rules , according to Articles 18 and 19 of Regulation 216/2008.

EASA cannot provide legally binding interpretations of EU Regulations . These functions are reserved to national and EU courts and to the European Commission.

For that reason, any queries concerning the implementation of aviation safety regulations within EASA's remit should be forwarded to your Licensing Authority/ Competent Authority.

[...]

*However, I am happy to assist you by **providing links here to the applicable legislation [...]**."*
[4] (emphasis added)

The complainant replied to EASA that he would again turn to the national aviation authorities but he also expressed his frustration about not having found an ombudsman or authority to mediate between the national aviation authorities.

5. On 28 August 2016, the complainant turned to the Ombudsman.

The inquiry

6. The Ombudsman opened an inquiry into the complaint that EASA's behaviour is contrary to



what can be expected of a responsible authority. The complainant wishes EASA to act as a mediator between national aviation authorities and to ensure consistent application of EU regulations by national aviation authorities.

7. In the course of the inquiry, the Ombudsman's inquiry team duly considered the information provided in the complaint. In particular, the inquiry team carried out a thorough analysis of the correspondence that had taken place between EASA and the complainant before the complainant turned to the Ombudsman.

Allegation that EASA's behaviour was contrary to what can be expected of a responsible authority

The Ombudsman's assessment

8. The mission of EASA is to “ *promote the highest common standards of safety and environmental protection in civil aviation. The Agency develops common safety and environmental rules at the European level. It monitors the implementation of standards through inspections in the Member States and provides the necessary technical expertise, training and research. The Agency works hand in hand with the national authorities which continue to carry out many operational tasks , such as certification of individual aircraft or licensing of pilots .* ” [5] (emphasis added)

9. The complainant does not question the fact that EASA's role is to assist in developing standards, such as for pilot licensing and related medical certificates, but that it is for the competent national authorities to apply these standards. The idea is thus to have high and commonly recognised standards in the area of aviation safety. EASA's role involves making sure that these standards are respected at Member State level.

10. The UK Civil Aviation Authority (referring to itself as UK CAA) states on its website that it “ *has been advised by the German Authority (LBA) that, due to German national law concerning Data Protection, the LBA are unable to facilitate the transfer of pilot medical records from Germany to other States. It is therefore not possible to proceed with transfers of State of Licence Issue from Germany (LBA) to the UK (UK CAA), or indeed any other state, as the whole certificatory medical record of pilots must be held by the state to which a licence is transferred. Please note that German pilots' licences are fully valid in all EASA member states .* ” [6]

11. The problem encountered by the complainant in the present case is thus not one of a failure to adhere to common standards, or of inconsistent application of the relevant rules in the area of aviation safety, as suggested by the complainant. The problem of not being able to transfer the pilot medical records seems to have arisen due to national data protection rules, which fall outside the scope of EASA's responsibility. The German aviation authority seems to have tried to resolve the problem for the future by setting up a flight medical database. [7]

12. On the basis of the above, EASA's reply to the complainant, explaining that it could not help him, was entirely reasonable. EASA also replied rapidly to the complainant's queries and



advised him to turn directly to the competent national authorities. There was thus no maladministration by EASA in its handling of the complainant's concern.

13. Also, according to the UK Civil Aviation Authority's website, German pilot licences are valid in the UK and the complainant should therefore be able to exercise his profession in the UK.

Conclusion

On the basis of the inquiry into this complaint, the case is closed with the following conclusion :

There was no maladministration by EASA on this matter.

The complainant and EASA will be informed of this decision.

Strasbourg, 16/12/2016,

Tina Nilsson

Head of Inquiries - Unit 4

[1] Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008, Annex III, paragraph 4b sets out the **qualifications required to become an aero-medical examiner** .

[2] Commission Regulation (EU) No 290/2012 of 30 March 2012 amending Regulation (EU) No 1178/2011, provision, Annex VI, Subpart MED, ARA.MED.120 specifies the **qualifications required to become a medical assessor** . The EASA's guidance material on Part-ARA of this Regulation, initially issued on 19 April 2012, sets out the **tasks of medical assessors** in its part AMC2 ARA.MED.120, stipulating that medical assessors should, among other things, **supervise and audit aero-medical examiners** .

The requirement for a medical assessor's signature is, for example, provided for in the UK Civil Aviation Authority's transfer of medical form:

<http://publicapps.caa.co.uk/docs/33/SRG1202Issue07.pdf> [Link]

[3] The details of the composition of this flight medical database are set out in the German Air Traffic Act (Luftverkehrsgesetz) as amended by Article 1 of an Act dated 28 June 2016 (Bundesgesetzblatt Part I, No. 32, pp. 1548), in paragraph 65b

[4] The applicable legislation referred to by EASA: Regulation (EU) No 1178/2011 of 3 November 2011, laying down technical requirements and administrative procedures related to civil aviation aircrew pursuant to Regulation (EC) No 216/2008 of the European Parliament and of the Council of 20 February 2008, in particular provisions: Annex I, Subpart A, FCL.015; and



Annex IV, Subpart A, MED.A.025; as well as of Commission Regulation (EU) No 290/2012 of 30 March 2012 amending Regulation (EU) No 1178/2011, provision, Annex VI, Subpart MED, ARA.MED.150

[5] <https://www.easa.europa.eu/the-agency/faqs/agency#category-about-easa>

[6]

<https://www.caa.co.uk/Commercial-industry/Pilot-licences/Applications/Medical/How-to-obtain-a-UK-EASA-licence-if>

[7] See footnote 3.