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European Ombudsman

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**Subject: Adoption of the EASA Transparency Programme**

Annex: Report on EASA Transparency Programme

Dear Ms O'Reilly,

In December 2014, we informed you that EASA was in the process of finalising its Transparency Programme which was finally adopted by EASA senior management on 5<sup>th</sup> of January 2015 (please find the relevant report in attachment).

It is understood that the Agency may face exposure if it fails to address its obligations in terms of transparency and openness of information to the public. At the same time, EASA has to reconcile the above mentioned principle with the interest to protect the confidentiality of sensitive information in the framework of its institutional tasks (i.e. commercially sensitive information, personal data and other sensitive material).

In order to appropriately address both principles, the EASA transparency programme envisages four objectives:

- 1) Increase the understanding of EASA activities within the civil society through the review of the EASA internet platform;
- 2) Define the right balance between transparency and protection of sensitive/confidential information;
- 3) Promote good administrative practice within the Agency's internal activities;
- 4) Strengthen the implementation of Regulation (EC) 1049/2001 on public access to documents and its internal procedure.

In this respect, the Agency conducted an analysis on the level of information available to the public. The results show that the quantity of information available to the public is quite complete, however some areas of improvement have been identified:

- **Relevance and accessibility:** Information should be presented in a plain and comprehensible language and in a format appropriate for different stakeholders and audiences. Information should retain a sufficient level of detail in order to allow a clear understanding and evaluation.

- Time and accuracy: Information should be made available on time with the aim of allowing the relevant stakeholders time to analyse and evaluate the data.
- Observance of legal requirements: Documents should be published where the Agency has a legal requirement to do so and for those areas where it is considered beneficial and relevant for the public and the aviation community to have access to certain information.

The analysis conducted has also considered how the Agency can identify its confidential and sensitive information and protect it from disclosure. As a result, the EASA documents are being classified according to the respective level of sensitivity.

The programme also contains some recommendations related to raising awareness on transparency amongst staff members, which will be gradually implemented in 2015.

As previously mentioned in our prior correspondence, this programme integrates and complements the already existing rules on openness and transparency in particular, the EASA implementing rules on public access to documents and the policy on management of conflict of interests.

The Agency trusts that the actions taken to ensure better transparency are satisfactory and thanks the Ombudsman for her support.

Yours sincerely,



Patrick KY



Report  
**on EASA Transparency Programme**

December 2014

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## 1. Executive Summary

The Agency may face exposure and liability risks (from stakeholders, European judicial instances and politics) if it fails to address its obligations in terms of transparency and openness of information to the public. The way the Agency implements the principle of transparency can determine its accountability and credibility to the external world.

At the same time, EASA has to reconcile such principle with the need to respect the confidentiality of sensitive information processed for reasons of its institutional tasks (i.e. commercially sensitive information, personal data and other sensitive material).

In order to appropriately address these two conflicting principles, EASA has developed this programme. Four objectives are proposed to generally improve and promote the level of transparency and the awareness of the staff members towards this topic. The implementation of two of these objectives is analysed in this paper whilst the remaining two will need to be gradually implemented in the course of 2015.

Firstly this report provides an analysis and evaluation of the current level of transparency of EASA, with particular focus on the quality and quantity of information and documents published on the EASA website.

The results of the analysis conducted show that the quantity of information available on the website is quite complete however simply making the information available is not sufficient to achieve transparency. Large amounts of raw information in the public domain may breed opacity rather than transparency. In this perspective, the analysis has shown that the major areas of improvements are the following:

- **Relevance and accessibility:** Information should be presented in a plain and comprehensible language and in a format appropriate for different stakeholders and audiences. Information should retain a sufficient level of detail in order to allow a clear understanding and evaluation for the different audiences.
- **Time and accuracy:** Information should be made available on time with the aim of allowing the relevant stakeholders time to analyse and evaluate the data.
- **Observance of legal requirements:** Documents should be published where the Agency has a legal requirement to do so and for those areas where it is considered beneficial and relevant for the public and the aviation community to have access to certain information.

Secondly this report analyses how the Agency can identify its confidential and sensitive information and protect it from disclosure. This has requested the identification of EASA documents in the various areas of activities and the classification of the documents according to their level of sensitivity.

This report moreover provides some recommendations concerning the implementation of other two objectives which relate to the application of the principle of good administrative practice and to raising awareness on transparency amongst staff members, which according to the programme, shall be gradually implemented in 2015.

## 2. Introduction

In June 2014 the Agency launched a transparency programme with the main objective to strengthen the application of the principle of transparency in the internal working methodology of the Agency to better address the need of information within EASA stakeholders and the civil society, while protecting sensitive non-releasable information.

In order to properly address the needs of the Agency, it was considered more suitable to draft a programme on transparency with the aim of implementing such a principle in the overall activities of EASA, rather than having only a policy as such.

This paper analyses the existing level of transparency of the Agency with a special focus on its website and on the proactive disclosure of information; it further examines what are the elements of such a concept, and proposes measures that can be implemented in the year 2015 in order to strengthen the implementation of such principle.

## 3. Legal framework

The legal obligations in terms of transparency and access to documents derive from primary and secondary European legislation and have been significantly strengthened with the entry into force of the Lisbon Treaty and by the parallel jurisprudence of the European Court of Justice (EUCJ).

The Treaty on the Functioning of the European Union (TFEU) reinforces this principle in its Article 15(1) where it provides that Union's institutions, bodies, offices and agencies have a duty to conduct their work as openly as possible in order to promote good governance and ensure the participation of civil society.

Article 298(1) and (2) TFEU provide an important addition to the regulatory transposition of the principle of openness. This article states that in carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration and it confers on the Union's legislator the power to establish provisions to that end.

In parallel the EUCJ confirmed, in a leading case, that a lack of information and debate is capable of giving rise to doubts in the minds of citizens, not only as regards the lawfulness of an isolated act, but also as regards the legitimacy of the decision-making process as a whole<sup>1</sup>

With respect to access to documents of the institutions, Regulation (EC) No 1049/2001 is the cornerstone of the right of access to administrative documents, furthermore the Charter of Fundamental Rights, in its article 42, makes this access a fundamental right of any citizens residing in the EU.

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<sup>1</sup> ECJ, 1 July 2008, Kingdom of Sweden and Turco v Council, C-39/05 P and 52/05P, paragraph 59.

In addition to this, Regulation (EC) No 1367/2006 (which implements the Aarhus Convention), provides for the right to Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies and also applies to EASA.

Finally, as part of the right to good administration, EASA Code of Conduct also provides for the principle of transparency and collegiality in the decision making and the right of public access to documents.

## 4. Context

Openness and transparency are considered key principles in bringing the European Union closer to its citizens. Where openness enables citizens to participate more closely in the decision making process of the institutions, transparency allows citizens to be informed about the institution activities and to understand its outputs.

Over the years the environment in which EASA operates and the legal framework applicable to openness and transparency have evolved; this caused a growing demand from interested parties, from the European judicial and political instances and from the EU Ombudsman for more public information and accountability from the Agency.

In September 2014 the EU Ombudsman addressed a message to several European Agencies, including EASA, calling them to adopt transparency initiatives with the aim of modernising the present approach toward public access to information and improving the level of openness to the civil society.

EASA replied to the EO presenting the main lines of its transparency programme that is outlined in this paper.

## 5. Objectives

The final overall objective of the transparency programme is to provide clarity on EASA activities and thereby promoting confidence, legitimacy and accountability among citizens and the interested parties. In order to achieve this goal the Agency should reach the following objectives which will have to be gradually achieved in the period between 2014 and 2015.

- 1) Increase the understanding of EASA activities within the civil society, through the revision of the EASA internet platform (2014-2015).

For achieving this objective an analysis was carried out on which information should (or could) be made proactively available and in which form. This action has the ultimate scope to facilitate easy availability and better understanding of the activities of EASA.

- 2) Define the right balance between transparency and protection of sensitive information (2014-2015)

This task has required the identification of confidential and sensitive information and documents that needs to be protected against disclosure. The task has been carried out in close interaction with the technical departments and has collected also outputs deriving from other Agency's initiatives in the field of documents classification (i.e. EASA Policy on information security classification and other internal guidelines on the protection of safety data and information).

### 3) Promote Good Administrative Practice (2015)

The success of a transparency programme also requires that awareness on transparency is embedded in the daily activities of the Agency and of its staff members. The implementation of this objective will require dialogue with the EASA departments and awareness sessions on transparency. At the moment only a brief induction training to newcomers is provided on this subject matter.

### 4) Enhance EASA implementation of Regulation (EC) 1049/2001 on public access to documents and its internal procedure (2015).

Awareness sessions should also be focused on strengthening the EASA internal working procedure on public access to documents and harmonising the handling of specific access requests.

It should be noted that this report focuses mainly on the first phase of the programme and in particular on the analysis of objectives n. 1 and n. 2<sup>2</sup>.

The level of engagement and openness embraced by EASA in allowing public participation in its rulemaking process has been largely recognised at European level and therefore will not be further analysed in this paper.

## 6. Working method

In order complete the first two objectives, interviews with representative staff from all sector of the Agency operations were organised. During these sessions the quality and completeness of the information published on the EASA website was assessed. In addition, it was also analysed how to proceed to the classification of documents in the area of the Certification and Flight Standards Directorate.

## 7. Results of the analysis

**Objective n. 1 : Increase the understanding of EASA activities within the civil society through the revision of the EASA internet platform 2014-2015.**

Two main areas of improvement were identified in order to properly achieve this objective:

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<sup>2</sup> As presented in the paper for the ExComm on 26.06.2014 the objectives n. 3 and n. 4 will be developed in 2015

- a) The first area of improvement relates to the *content* of the information and in particular to *proactive* publication on the website of those documents and information that the Agency has the legal obligation to publish and/or which have been identified as having public relevance;

The table presented in Annex I of this report includes all the documents that have been identified for potential release and for which publication is recommended.

In addition the Agency has the legal requirement, stipulated by Article 11 of Reg. (EC) 1049/2001 on access to documents, to provide public access to a register of documents in electronic form. This implies that all EASA documents should be recorded in such register. As a general rule, the register should include, for each document, a classification number or reference number, the document's date and the name of the author or the department responsible for producing the document. It has been noted that the Agency still does not comply with such requirement.

- b) The second area of improvement that has been identified relates to the *quality* of the information and in particular to manner, structure and criteria used to present the information on EASA website .

It is important to note that transparency relates not only to the quantity but especially to the quality of the information published.

It appears that the information published on EASA website in terms of quantity is quite complete. However it seems to be very fragmented and difficult to retrieve even for those users that are familiar with the EASA environment. Documents and information should be made easily available and displayed in intuitive and user friendly manner.

The language used to present the information is often very legalistic and difficult to understand for non-aviation experts. Information should be presented in plain and readily comprehensible language and formats appropriate for different stakeholders.

Information should be accurate and up to date, it should be made available in sufficient time to permit analysis, evaluation and engagement by relevant stakeholders.

**Objective n. 2: Define the right balance between transparency and protection of sensitive information 2014-2015**

In order to properly achieve this objective the EASA documents pertaining to the processes of Certification and Flight Standards Directorates have been classified according to the exceptions of confidentiality provided by Regulation (EC) 1049/2001 on access to documents.

Such classification will allow to maintain a consistent approach when replying to access to documents request. This table constitutes a living document that can be constantly updated to include new documents and/or to update the level of classification in an harmonised way.

## 8. Recommendations

This report provides a gap analysis on the level of transparency of EASA and includes some recommendations that could be implemented at Agency level. It goes without saying that the implementation of some of these actions might have a financial impact that should be duly considered.

As a result of the gap analysis the following recommendations should be implemented by the end of 2015:

1) On the availability of information and documents on EASA external website:

- Documents that have been identified for potential release (in the Annex I) should be published.
- Documents that the Agency has the legal obligation to publish should be made available to the citizens (Annex I).
- Documents and information should have a clear structure, be made easily available and displayed in intuitive and user friendly manner.
- Information should be presented in plain and readily comprehensible language using formats appropriate for different stakeholders.
- Information and documents should be made available in sufficient time to permit analysis, evaluation and engagement by relevant stakeholders

A time frame should also be identified for the implementation of the following recommendation:

- A public register of document should be set up in accordance with Article 11 of Regulation 1049/2001. This recommendation should be considered in the framework of the implementation of the Agency's record management system.

In order to duly implement these recommendations, a contact point should be identified for each area of activity (Department or Directorate) in order to coordinate the content and structure of the internet page together with the Communication department.

It has been noted that some Departments are already working together with the Communication Department in order to restructure their website, however this initiative should cover all the areas of activities of the Agency in an harmonised manner. It is therefore recommended that the operational Departments would embrace these recommendations in their respective activities.

2) Concerning raising awareness of staff on transparency and on the implementation of the access to documents procedure the following recommendations are also made:

- The list of classified documents of the FS and C Directorates should be made available on the EASA intranet (internal website).

- Training and/or awareness session on transparency and access to documents should be designed and provided to selected EASA staff. The training should be developed by the legal department in cooperation with the technical department and should present also practical cases.



## 9. Annex I: Tables of EASA documents identified for potential publication.

Process	Description of the Document/ information	status	Current Status	Proposal for possible release	Should it be distributed to the public because of its general interest?
Certification	Summary version of the Certification final report	This document should be published at the end of certification project	●	This document would provide a demonstration of compliance with requirements for issuance of certificate / approval etc. without releasing confidential information	●
	Certification Activities Report	This document does not exist in a public version. It should include those information that could be of public relevance like statistics, number of certificate issued.	●	This documents would provide a summary of the certification activities without releasing confidential information	●
	Special Conditions (including equivalent safety findings, environmental requirements, acceptable means of compliance and interpretative material)	At the moment only those SCs that are requested by the public are published on the internet.	● ●	Art 3.2 of MB decision 12/2007 provides that “Deviations from the applicable airworthiness codes, environmental protection certification specifications and/or acceptable means of compliance with Part 21, as well as important special conditions and equivalent safety findings, shall be submitted to the panel of experts and be subject to a public consultation of at least 3 weeks, except if they have been previously agreed and published in the Official Publication of the Agency. The final decision shall be published in the Official Publication of the Agency.”	● A systematic proactive approach should be taken towards the publication of these documents that EASA is required to publish.

	Information on General Aviation	At the moment the information published is perceived as being fragmented and unclear by the GA community.	● ●	<p>“GA Regulatory Quick Reference Guide”:</p> <p>The GA Roadmap aims to develop simpler, lighter and better rules for GA. In accordance with the ‘New approach to General Aviation’. A GA Regulatory Quick Reference Guide will be published containing key information relating to GA and in particular helping users to find the appropriate rules and regulations in the various technical fields.</p>	● The guide should be published in February 2015
Flight standards	Maintenance organisations: Approval Certificates and scope of the approval	only a list of foreign organisations is published	● ●	The publication of a list of approved organisations in the MSs and abroad and the publication of the certificates and scope of approval for all such organisations is recommended.	● ●
	General availability of the information on FS activities	it is generally difficult to easily retrieve information about Flight Standards activities in a consolidated manner	●	A specific section on FS should be created where information about this area of activity could be easily identified and consulted	●
	Standardisation annual report	This document does not exist in a public version. It is sometimes released upon request prior deletion of sensitive information	●	This documents would provide a summary of the Standardization activities without containing confidential/sensitive information.	●
Strategy and Safety Management IORS	Information on IORS external website		●	At the moment a project is ongoing to modify the IORS external website to make it more content- structured and efficient	●
Strategy and Safety Management: Safety research	Document on EASA research priorities for aviation safety	At the moment only a report on the already concluded research projects is published	● ●	The documents should include a list of researches that have been prioritised and that will be undertaken to respond to safety needs.	●

<p>Strategy and Safety Management: Safety Analysis information/documents</p>	<p>Monthly outputs / yearly outputs</p>	<p>The document "Safety Analysis Strategy for Europe " (October 2014) recognises that "aviation safety has an information problem".</p> <p>The challenge is to provide a range of outputs that meet the needs of the full range of stakeholders.</p> <p>Some challenges and output have been identified in order to address this problem.</p>	<p>Amongst other initiatives that foresee the sharing of information with the Aviation Community, some initiatives have been identified to share information with the public.</p> <p><u>Monthly Outputs:</u> The EASA Occurrence Review Group (ORG) would produce monthly reports for Agency stakeholders depending on their specific requirements (including existing standardisation monthly report). The EASA ORG would agree the contents of an EASA external communication publication of key lessons from occurrences and completed accident investigations.</p> <p><u>Annual Outputs:</u> EASA would produce an Aviation Safety Review that would provide the coordinated results of the whole safety analysis process to provide the best possible safety picture that is clearly linked to the EASp.</p>	<p>●</p>
<p>Strategy and Safety Management: International Cooperation</p>	<p>Information and documents concerning International Cooperation general activities</p>	<p>A review of the information currently provided on the EASA website is ongoing. The web pages will be re-structured in coordination with ED.1. At the moment only a list of working arrangements and BASA is published on the website.</p>	<ul style="list-style-type: none"> <li>- Increase the amount of information (currently limited to Bilateral Agreements and Working Arrangements), in particular regarding technical cooperation programmes;</li> <li>- Provide more 'user-friendly' information, using content that is clear, informative and easy to understand;</li> <li>- Increase its visibility, by making the information more easily accessible for the visitors of the website.</li> <li>- With regards to Technical Training activities, it has been identified that the information currently provided on 'who' (external) can attend the EASA courses can be confusing for the website visitors. The Agency policy on this needs to be formalised and clearly stated on the relevant web page.</li> </ul>	<p>●</p>
<p>Management Board</p>	<p>Minutes of meetings</p>	<p>Presently only the minutes of meetings until 2011 are published</p>	<p>A decision should be taken on the publication of minutes for the years as of 2012</p>	<p>●</p>

	Declarations on conflict of interests (Dols)	At the moment only part of the Dols is published	●	Declarations of all members and alternates should be published as established by the "MB decision adopting a code of conduct for the member of the MB".	●
	Curriculum Vitae	At the moment only part of the CVs is published	●	CVs of all members and alternates should be published as decided by the MB following request from EP	●
Legal	Information on the Confidential Safety Reporting (external whistle blower procedure)	Presently no mention of this procedure is made on the website	●	The public and the aviation community should be made aware of the existence of this procedure which guarantees anonymity in case of safety reporting. This would encourage the public and the aviation community to come forward with safety information of general interest.  Information should be provided in that regard.	●
	Data Protection notices	At the moment only part of the data protection notices are published on the internet	●	A more exhaustive data protection notice covering the activities of the Agency should be published, so as to inform the public and the interested parties on how personal data are processed in EASA.	●
Human Resources	Curriculum Vitae of Managers	At the moment only the CVs of Directors are published	●	CVs of all HoD's to be published.	●
	EASA organigram	At the moment the published organigram only includes the division in departments	●	An organigram of EASA, including an indication of the sections, should be published. It could be relevant for the public since it would facilitate the identification of the areas of activities.	
Finance	Anti-Fraud Strategy for the Agency	The documents exists however no mention is made on EASA website	●	It should be published as part of the measures to improve accountability vis-à-vis the civil society in the area of ethical matters.	●
	Fees and Charges information for applicant	Fees and charges information exists on the website in the form of FAQs	●	Clearer and more structured information for end-users and general public should be published.	●

General	List of acronyms used by EASA	The document is only published on EASA intranet	●	A document including a list of EASA acronyms relevant for the general public should be published.	●
	EASA Strategy paper	This document will contain the strategic vision of the Agency	●	This document should be published in order to make citizens more aware of the strategy and priorities of the Agency.	●

Key Table :

- : Documents/information not published.
- : Documents /Information only partially published.
- : Documents/information recommended for publication.

