



## European Aviation Safety Agency

**Patrick Ky** • Executive Director

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Cologne, 24. MRZ. 2014  
DHOR/oco/E(5) 2014(D)51437

Mr John Langford  
83 Twyford Avenue  
UK-London W3 9QD

**Subject: Your confirmatory application for access to documents**

Reference: Your e-mail to EASA, dated 22.01.2014

Dear Mr Langford,

Thank you for your e-mail in which you request the Agency to reconsider its decision of 21 February 2014 of refusing to grant access to the documents you requested namely compliance documents relating to the technical, test flying and safety evaluation of the Type PS-28 Cruiser prior to awarding of the Restricted Type Certificate (MC3, MC4, MC6, MC8 and MC9). In your confirmatory application you further specified that you "would not object to receiving the Summary, Conclusions, Recommendations or other elements or synopsis from of the documents which would identify the rationales" that created the differences between the PS-28 Cruiser aircraft types.

Your confirmatory application has been handled in accordance with Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

The Agency decided to deny your initial request due to the exceptions provided for by Article 4(2) first indent of Regulation (EC) 1049/2001, namely protection of commercial interest, including intellectual property.

The Agency has now reviewed your confirmatory application in light of the clarifications you provided and I regret to inform you that I see no reasons to change our view; the Agency is still not able to disclose the requested compliance documents due to their confidential and commercially sensitive nature.

Tel: +49 221 89990 2000 Fax: +49 221 89990 2500 [patrick.ky@easa.europa.eu](mailto:patrick.ky@easa.europa.eu)



Postal address: Postfach 10 12 53, D-50452 Cologne, Germany — Visiting address: Ottoplatz 1, D-50679 Cologne, Germany  
Tel.: +49 (0) 221 8999 000 Fax: +49 (0) 221 8999 099 E-mail: [info@easa.europa.eu](mailto:info@easa.europa.eu) Website: <http://easa.europa.eu>

## **Commercial interest**

The documents relate to Czech Sport Aircraft's respective protected business and technical secrets, and commercial interest, since the compliance documents you requested contain detailed technical information about the envisaged design of the aircraft type, as well as drawings, values, schemes and working methods, which are the result of high value engineering work developed in several years of technical research. The release of such data would clearly affect Czech Sport Aircraft commercial standing since it would expose its capabilities to competitors.

Consequently access to these documents is to be refused on the basis of article 4(2) first indent of Regulation (EC) 1049/2001, which stipulates that "the institutions shall refuse access to a document where disclosure would undermine the protection of commercial interest of a natural or legal person".

## **Partial access**

EASA has also considered the possibility of granting partial access to the documents under article 4(6) of Regulation (EC) 1049/2001. Please note that the certification documentation for the PS-28 Cruiser is more than 1800 pages in total the majority of which is protected by the exception stated above. The redaction of the commercially sensitive content from each requested document would place an excessive administrative burden on the Agency and may result in completely blanked out documents, and that would not in line with the general principle of proportionality as laid down in Article 5(4) of the Treaty on European Union<sup>1</sup>.

For this reasons no partial access to the document is possible.

## **Overriding public interest**

Pursuant article 4(2) of Regulation (EC) 1049/2001, the exception to the right of access must be waived if there is an overriding public interest in disclosure; that is to say objective and general in nature and which is not indistinguishable from individual or private interests that would outweigh the public interest in protecting the activities performed by the Agency.

You provided reasoning regarding the SportCruiser owners concerns about the possible future requirements for non-certified SportCruiser aircraft, which can result in financial burden the extent of it is depending on the decision taken on the necessary technical actions in the future. However, considering the above conditions, your reasons can be evaluated as individual or private interest, and EASA finds that you have not demonstrated what kind of overriding public interest is at stake which would prevail over the protection of confidentiality provided for in Article 4(2) first indent of Regulation (EC) 1049/2001.

Therefore I decide not to disclose the requested compliance documents.

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<sup>1</sup> The treaty on the European Union Art. 5(4) Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

## **Other considerations**

However, as I fully understand your situation, I would like to offer you the following information about some aspects of your request and the overall situation concerning the SportCruiser and PS-28 Cruiser.

After having carefully considered your clarifications it is clear that the information you are looking for is not included in the documents you have requested. For this reason I would like to provide you with the following explanations which I hope will be of interest for you.

As mentioned above, the PS-28 Cruiser certification documents you requested concentrate on PS-28 Cruiser only, and do not contain any description or evaluation of the differences between the SportCruiser and the PS-28 Cruiser, as this comparison was not the part of the certification process.

However, we can understand that the community of SportCruiser owners might have concerns about the possible future requirements for non-certified SportCruiser aircraft. In this regard and in reply to the issues you raised in your letter, I would like to mention the following.

As regard to your question on the number of the aircrafts, in EASA's knowledge the present situation concerns 30 SportCruisers flying in Europe on Permits to Fly. While there are advantages of having an aircraft operated on Restricted Certificate of Airworthiness, we understand that for various reasons this is not always possible for many owners. Thus, EASA has started to work with Czech Sport Aircraft (CSA) to identify the next steps to take for the concerned aircrafts to be operated on permanent Permit to Fly.

As you correctly mentioned in your letter, the SportCruiser is indeed different from the PS-28 Cruiser in many aspects. However, not all these differences are the results of testing, technical evaluation and compliance demonstration. Some of them have been introduced by CSA for better comfort, ergonomics, higher reliability or production simplification.

EASA and CSA are currently evaluating the compliance of the whole fleet of SportCruiser aircraft with ASTM F2245-08 standard. Once the outcome of this evaluation is finalised by EASA and CSA, we will have a basis for a Transition Program for each individual SportCruiser aircraft in order to approve Flight Conditions for a permanent Permit to Fly under 21A.701(15) of Commission Regulation (EU) No 748/2012<sup>2</sup>. In the end, all SportCruiser aircraft will be assessed for compliance with ASTM F2245-08 which is the basis for their initial flight conditions. This is not equivalent to the ASTM F2245-10c standard mentioned in Certification Specifications for Light Sport Aeroplanes (CS-LSA). Once the Transition Program is finalised, it will be communicated by CSA to each individual owner of SportCruiser aircraft.

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<sup>2</sup> Commission Regulation (EU) No 748/2012 laying down implementing rules for the airworthiness and environmental certification of aircraft and related products, parts and appliances, as well as for the certification of design and production organisations (OJ L 224, 21.8.2012, p.1-85)

For your information, EASA and CSA plan to present the results of the evaluation in a meeting with the owners of SportCruiser aircraft at AERO Friedrichshafen on 10 April 2014, where the transition exercise will be explained interactively and in more details. You are very welcome to attend this meeting, or if this is not convenient for you, we can organise an *ad hoc* meeting for you at EASA premises in Cologne, after the AERO event.

You can also obtain more information regarding the evaluation by contacting the EASA project certification manager *Mr Michal Stepan* (phone number: +49 221 89990 4378).

Additionally, please be informed about policy document on transition period for LSA aircraft under permit to fly which is available on the EASA web-site: <https://www.easa.europa.eu/certification/fag/docs/LSA%20Transition%20period.pdf>.

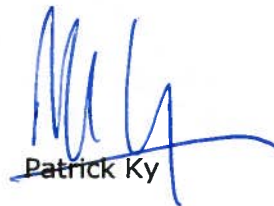
Finally, please note that EASA promotes the highest common standards of safety and environmental protection in civil aviation in Europe and worldwide. This aim is the only drive for EASA when deciding the approach to take in these kind of issues. I hope this would settle your concerns and suspicions regarding the possibility that commercial interest would precede over aviation safety.

I hope this satisfies your request, however please do not hesitate to come back to us should you have further concerns.

#### **Means of redress**

If you wish to appeal against EASA's decision to deny access to the documents you have requested, the legal remedies open to you are either to lodge a complaint with the European Ombudsman or to institute court proceedings against the Agency, under Article 228 or 263 of the Treaty on the Functioning of the EU (TFEU), respectively.

Yours sincerely,



Patrick Ky