Subject: Your request on access to documents

Dear Mr de Lange,

Thank you for your e-mail dated 6th February 2017 in which you clarify your request for access to documents in accordance with Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents. The scope of Regulation (EC) No 1049/2001 was extended to documents held by the European Aviation Safety Agency (EASA).

You request access to all documents regarding ramp inspections concerning Ryanair’s activities in the Netherlands including information on companies that work together with Ryanair like Brookfield, Storm McGinley, Crewlink and Dalmac.

As explained in our previous letter dated 3rd of February 2017, the ramp inspection reports do not include any information on the companies that work together with Ryanair, since this falls outside the scope of such inspections.

Concerning your request for access to the ramp inspections reports, the Dutch Competent Aviation Authority (as author of the documents) has been consulted with a view to assessing whether one or more of the exceptions in Article 4 of Regulation (EC) No 1049/2001 would be applicable.

After the conclusion of such consultation, EASA has taken the following decision:

The requested documents fall under the system of exceptions provided for in Regulation (EC) No 1049/2001 and cannot be provided to you.

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3 In accordance with Article 4 (4) and 4 (5)
The exceptions that apply to the documents are included in Article 4 (1) (a) and Article 4 (2) first and third indent of Regulation (EC) No 1049/2001 since the release of the documents would undermine the protection of the public interest as regards to international relations, the protection of the commercial interest of a natural or legal person and the purpose of inspections, investigations and audits.

With reference to the exception in Article 4(2) third indent of Regulation (EC) No 1049/2001:

Article 4(2) third indent of Regulation (EC) No 1049/2001 establishes an exception from the obligation to grant access to documents based on the need to protect the purpose of inspections, investigations and audits. In the present case the release of the requested reports would compromise the interest of the EU Ramp Inspection Programme (‘Programme’) for the following reasons.

Under the current legal framework 4 Member States’ Competent Aviation Authorities (CAAs) shall perform ramp inspections of aircraft landed at their aerodromes against the applicable requirements.

The same regulation provides that Member States shall use the information received by them in the framework of the Programme solely for the purpose of aviation safety and shall protect it accordingly. The regulation sets forth the purpose of use of such information and ingenerates the presumption that CAAs and EASA must protect the information against any use that would be incompatible with the protection of aviation safety. Similarly, the working arrangements concluded by EASA with CAAs of non-EU States participating in the Programme require them to protect the information.

It should be noted that the 48 States participating in the Programme contribute to the collection of safety data via ramp inspections. If EASA would disclose ramp inspection reports to persons or entities outside this Programme, the willingness of the States to share their inspection reports might decrease and States might limit the level of detail of the exchanged information. Moreover, the non-EU States participating voluntarily in the Programme might decide to leave the Programme if EASA would not apply the same level of protection of the information that is required from them. Non-EU States considering to join the Programme might choose not to. All these possible consequences of disclosing reports could have a negative impact on the functioning of the Programme and ultimately on aviation safety.

In addition, ramp inspections are part of a wider oversight programme 6 set up under the responsibility of the CAA where the operator is located. Disclosing ramp inspection reports in isolation and without any context or factual information from the national oversight programme could generate false assumptions leading to wrong conclusions.

Against this background, we strongly believe that the disclosure of the requested documents will undermine the protection of the integrity of the Programme.

4 Commission Regulation (EU) No 965/2012
5 ARO.RAMP.160 “Information to the public and protection of information” of Commission Regulation (EU) No 965/2012
6 ARO.GEN.305 “Oversight programme” of Commission Regulation (EU) No 965/2012
With reference to the exception in Article 4(2) first indent of Regulation (EC) No 1049/2001:

The release of the ramp inspection reports would undermine the protection of the commercial interest of the operators.

As already explained, a ramp inspection report is only a snapshot of the condition of an aircraft or of an operator at a given moment in time. These reports are only one of the many sources of information used by the CAAs to assess the safety of the operators and are of very limited value without any context or for drawing any meaningful conclusions. For this reason EASA believes that releasing these reports could potentially put an operator at a commercial advantage or disadvantage versus its competitors, whose reports were not released in the public domain and thus harm the operators’ commercial interest.

With reference to the exception in Article 4 (1) (a) of Regulation (EC) No 1049/2001:

In addition to the above, the release of these reports potentially also undermines the protection of the public interest as regards international relations, amongst the States that participate in the Programme.

In order to achieve the objectives of the Programme, close cooperation with the CAAs of all those States which aircraft have been subject to ramp inspections is indispensable. As part of their responsibility for the safety oversight of their national operators, the CAAs are requested to ensure proper implementation of corrective actions to address the reported findings. In general terms, the release of any ramp inspection reports might ingenerate pressure from the public and jeopardise the cooperation between these States in the exercise of their oversight and in particular in the implementation of their follow up actions.

Administrative Information:

You are hereby notified that you have a right to request the EASA to reconsider its decision not to disclose the above mentioned documents by making a confirmatory application. In such case, you should send your confirmatory application in writing to the Executive Director of EASA (Postfach 10 12 53, 50452 Cologne, Germany). Please note that you have 15 working days from the date of receipt of this letter to file the confirmatory application.

Within 15 working days from the date of receipt of your request the Executive Director will inform you regarding the outcome of the re-examination of your confirmatory application, either by granting you access to the documents, or by confirming the refusal. In the latter case, he will also inform you of any further appeal routes you may take.

Yours sincerely,

[Signature]

Anhika Haug