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Head of Legal Department
Executive Directorate

Mr Joji Waites

British Airline Pilots Association

Cologne, 04. JUNI 2019

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Subject: Your request on access to documents

Dear Mr Waites,

Thank you for your e-mail of 15 May 2019, in which you apply for access to documents in accordance with Regulation (EC) No 1049/2001,¹ that is applicable to documents held by the European Union Aviation Safety Agency (EASA) under Art. 119(1) of Regulation (EU) No 2018/1139.²

In particular, you request concerned certification documents relating to B737 MAX MCAS System, namely:

- *Technical correspondence with the FAA pertaining to the certification of the Manoeuvring Characteristics Augmentation System (MCAS) on the Boeing 737 MAX (including demonstration of compliance against FAR/CS 25.671 and 25.672, together with description of the specific flight crew training required for MCAS).*
- *Any documents detailing safety concerns relating to the Boeing 737 MAX aircraft following the fatal accidents on 29th October 2018 (Lion Air) and 10th March 2019 (Ethiopian Airlines).*

Following the tragic accidents mentioned above, on 12 March 2019 EASA decided to suspend all flight operations with aircraft models Boeing 737-8 and 737-9 'MAX' by means of Emergency Airworthiness Directive (EAD) No. 2019-0051-E³ applicable for EU aircraft and Safety Directive (SD) No 2019-01⁴ applicable for third country operators authorised by EASA to perform commercial air transport operations into, within or out of the EU territory.

The abovementioned mandatory airworthiness action was triggered by an unsafe condition existing in one of the functions of those aircraft models. Before these aircraft models can be returned to service that unsafe condition has to be thoroughly investigated and the type certificate holder has to

¹ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 31 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145 of 31.3.2001, p. 43).

² Regulation (EU) No 2018/1139 of the European Parliament and of the Council of 4 July 2018 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91 (OJ L 212, 22.8.2018, p. 1–122).

³ <https://ad.easa.europa.eu/ad/2019-0051R1>

⁴ <https://ad.easa.europa.eu/ad/SD-2019-01>



propose corrective actions that are acceptable to the certifying authorities, and in particular to EASA in the EU, to restore the required level of safety. In this investigative process, cooperation in good faith and mutual confidence between the involved parties are indispensable in order to enable the different stakeholders to express themselves freely and this atmosphere needs to be protected from any interference. This is of fundamental importance for the safety process to work properly.

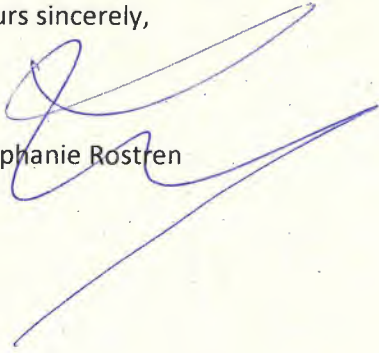
In addition, these two accidents are subject to ongoing safety investigations conducted by the safety investigation authorities of the State of Occurrence respectively. The sole purpose of such investigations is to establish the causes of the accidents and to draw the lessons to be learned to prevent future accidents or incident without apportioning blame or liability. EASA is committed to support these investigations to draw the necessary conclusions that will contribute to restoration of safety of the operation of these aircraft models. Thus, the same principles of protection must be observed that are mentioned above.

Against this background, we believe that the disclosure of documents in EASA's possession falling under this request, that are mainly of highly technical nature, could give rise to out of context or incorrect interpretations, and that would jeopardize the completion of these investigations. Therefore, these documents shall be protected from disclosure in order to ensure the impartiality and independence of the ongoing investigations, so that they can be pursued without any external influence or undue pressure.

In light of these considerations, EASA takes the view that the requested documents in its possession fall under the system of exceptions provided for in Regulation (EC) No 1049/2001. In particular, the disclosure of these documents would undermine the protection of the purpose of inspection, investigations and audits as set forth in the third indent of Article 4(2) of the Regulation, and that consequently EASA is not in the position to provide them to you.

Kindly note that you have the right to request EASA to reconsider its decision by making a confirmatory application. In such case, you should send your reasoned confirmatory application in writing to the Executive Director of the Agency (Postfach 10 12 53, 50452 Cologne, Germany). The deadline for submitting the confirmatory application is set at 15 working days from receipt of this letter. Any confirmatory application received beyond this deadline cannot be accepted.

Yours sincerely,


Stéphanie Rostren