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Mr Malte Wilhelm

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Cologne 05.04.2022

Subject: Your request on access to documents

Attachments: Drones operation – answers to questions

Dear Mr Wilhelm,

I refer to your e-mails received on 18th March 2022, in which you submitted an application for access to documents in accordance with Regulation (EC) 1049/2001¹, that is applicable to documents held by the European Union Aviation Safety Agency (EASA) under Art. 119(1) of Regulation (EU) 2018/1139².

In your e-mails you asked EASA a number of questions related to regulatory framework applicable to the operation of unmanned aircraft. After reviewing your request EASA has decided that the request received does not fall under the scope of Regulation (EC) No 1049/2001 because it concerns access to information rather than access to documents.

Assessment

Regulation (EC) 1049/2001 describes its scope as “(...) a right of access to documents of the institutions, subject to the principles, conditions and limits defined in this Regulation”. Furthermore, „document“ is defined in Article 2(3) as „any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility“.

In addition, the distinction between the concept of document and information has been extensively assessed by the Court of Justice of the European Union (CJEU) establishing that:

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).

„[n]otwithstanding that broad definition, which implies in particular that there is no limitation as to the medium of the content in question, it is necessary, according to well-established case-law, to maintain a distinction between the concept of a document and that of information, for the purposes of applying Regulation No 1049/2001.

Information may be distinguished from a document, in particular, in so far as it is defined as a data element that may appear in one or more documents. In that respect, since none of the provisions of Regulation No 1049/2001 deals with the right of access to information as such, it cannot be inferred that the public's right of access to a Commission document, which arises under Article 2(1) of that regulation, implies a duty on the part of the Commission to reply to any request for information from an individual.³

Furthermore, CJEU case law has extensively established that there is no obligation for an EU Institution to create a new document, even if that document were based on information already appearing in existing documents held by it, falls outside the framework of Regulation No 1049/2001.⁴ In this sense, Regulation No 1049/2001 may not be relied upon to oblige an institution to create a document which does not exist.⁵

In light of the above, it follows that your request classifies as a request for information and not a request for access to documents. For this reason, I hereby regret to inform you that we cannot process further your request as an access to documents request.

Irrespective of the above, for transparency purposes, and with the spirit of facilitating greater transparency of the conduct of EASA, please find attached general replies to your questions.

Means of redress

You are hereby notified that you have a right to request the Agency to reconsider its decision regarding the above-mentioned documents by making a confirmatory application. In such case, you should send your justified confirmatory application in writing to the Executive Director of the Agency (Postfach 10 12 53, 50452 Cologne, Germany). Please note that you have 15 working days from receipt of this letter in which to make the confirmatory application. Any confirmatory application received beyond this deadline cannot be accepted.

Yours sincerely,

Stéphanie Rostren

³ Judgment of the General Court of 2 July 2015 in case T-214/13, *Typke v Commission*

⁴ Judgment of the Court of 11 January 2017 in case C-491/15 P, *Typke v Commission*

⁵ Judgment of 2 October 2014, in case C-127/13 P, *Strack v Commission* .