



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

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February 11, 2021

The Honorable Peter Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Buttigieg:

We are writing to express our concern with recent statements by Mr. Peter Ky, the Director-General of the European Union Aviation Safety Agency (EASA), related to EASA's validation of Federal Aviation Administration (FAA) certificated U.S. aircraft and aerospace products and to request that you immediately respond to those statements.

On January 25, 2021, Director-General Ky appeared before the European Parliament's Committee on Transport and Tourism to discuss EASA's recertification of the Boeing 737 MAX.¹ According to news reports, during his presentation, Director-General Ky stated, "... we [EASA] will increase our level of involvement [and] our level of independent review of U.S. projects in order to build our own safety assessments."² His statement has been interpreted to mean that EASA "...intends to move away from the established practice of relying on the FAA for the certification of U.S. aircraft and products, and...will assert a more independent role in clearing their airworthiness."³ The announced change in established certification validation practice clearly is intended to apply to all U.S. aircraft and products regardless of existing

¹ *EASA recertification of Boeing's 737 Max, Exchange of views with Executive-Director Patrick Ky*, European Parliament, Committee on Transport and Tourism (Jan. 25, 2021), available at <https://www.ainonline.com/aviation-news/air-transport/2021-01-25/easa-strengthen-safety-reviews-us-certified-aircraft>.

² *Id.* Emphasis added.

³ Cathy Buyck, *EASA To Strengthen Safety Reviews of U.S.-certified Aircraft*, AIN ONLINE, (Jan. 25, 2021), available at <https://www.ainonline.com/aviation-news/air-transport/2021-01-25/easa-strengthen-safety-reviews-us-certified-aircraft>.

procedures or practices under the US-EU Bilateral Aviation Safety Agreement (referred to as the BASA).⁴

We are very concerned that Director-General Ky's comments could be taken as a groundless attack on the BASA, the FAA's safety certification regime, and U.S. aerospace manufacturers generally. His statement appears to unilaterally undermine the core premise of the BASA, which is based upon reciprocity between comparable certification systems. We are equally troubled by Director-General Ky's failure to even acknowledge that his own safety experts participated in extensive reviews of the FAA's certification system following the Boeing 737 MAX accidents and found no fundamental issue with that system. His comments also completely ignore the fact that the United States Congress recently took steps to further strengthen the FAA's certification system. Finally, we are greatly troubled that Director-General Ky's comments will groundlessly politicized aviation safety to a dangerous degree, undermining the long-standing professional relationship between the FAA and EASA.

During his presentation, Director-General Ky specifically referenced the BASA as one reason for the change in practice, stating that the bilateral agreement "...resulted in progressively less involvement of EASA in FAA-approved projects."⁵ His declared "across-the-board" change to the certification process seems intended to cause unnecessary fear and confusion. Indeed, the US-EU BASA was developed and agreed to based upon the existence of certification systems that produce equivalent results (even though their processes and procedures may be different).⁶ It is specifically intended to promote reciprocal acceptance of safety findings and approvals and to leverage the resources and expertise of each certification system.⁷ In other words, the BASA is based upon reciprocity between the United States and the European Commission built on "...a partnership of competent civil aviation safety regulatory authorities."⁸ A key tenant of the BASA is the recognition and acceptance of the certification work of the State of design.⁹ Pursuant to the BASA, the United States and European Commission have the ability to conduct heightened oversight of *specific* aircraft, aircraft parts or systems, or aerospace products if there is a risk-based reason for that additional scrutiny.¹⁰ However, Director-General Ky's statement related to EASA's change in certification validation clearly suggests a broad, across-the-board change rather than a targeted, risk-based approach.

⁴ *Agreement Between the United States of America and the European Community on Cooperation in the Regulation of Civil Aviation Safety* (signed June 13, 2008), available at https://www.faa.gov/aircraft/air_cert/international/bilateral_agreements/baa_basa_listing/media/EU-US-agreement-R0A5.pdf; see also "Consolidated Version of the Agreement between the USA and the EU on Cooperation in the Regulation of Civil Aviation Safety (BASA)" (prepared by EASA November 2020 to provide stakeholders with an updated and easy-to-read publication), available at https://www.easa.europa.eu/sites/default/files/dfu/Consolidated%20text%20of%20the%20EU_US%20BASA_incl%20BOB%2012.pdf.

⁵ Cathy Buyck, *supra* note 3.

⁶ FAA presentation, "The Aviation Safety Agreement Between the US and the EC", (August/September 2011); see: https://www.faa.gov/aircraft/repair/media/EASA_EU_roadshows.pdf.

⁷ *Id.*

⁸ *Id.*

⁹ *Agreement Between the United States of America and the European Community on Cooperation in the Regulation of Civil Aviation Safety*, *supra* note 4.

¹⁰ *Id.*

According to reports, Director-General Ky further attributed the change in how EASA will conduct validations of U.S. certificated aircraft and aerospace products directly to “...the lack of oversight of the FAA in certifying the Max-8 and -9.”¹¹ As you may know, during the last two years, in response to the tragic Boeing 737 MAX accidents in Indonesia (2018) and Ethiopia (2019), the FAA’s aircraft certification system and certification process for the 737 MAX have been the focus of intense review by numerous panels of aviation experts, *including experts from EASA*.¹² Notably, none of these expert reviews concluded that the FAA’s certification system was broken.¹³ Rather, the expert panel reports highlight ways to improve the FAA certification system.¹⁴ Additionally, the FAA, in cooperation with foreign Civil Aviation Authorities (*including EASA*), conducted a comprehensive and thorough review of Boeing’s proposed modifications to the 737 MAX prior to its return to service.¹⁵

In December 2020, the President signed into law the bipartisan *Aircraft Certification, Safety, and Accountability Act*.¹⁶ Nearly all of the Act’s provisions are tied directly to a recommendation made by the expert panels described, including those on which experts from EASA served. Importantly, based on those expert recommendations, Congress did not replace the FAA’s certification system, but rather reformed and strengthened the FAA’s certification process.¹⁷ We have repeatedly stated and continue to fervently believe that the FAA remains the global “gold standard” for aviation safety. While it is important to always seek ways to improve our already safe system, it nonetheless remains the safest in the world.

¹¹ Cathy Buyck, *supra* note 3.

¹² See The National Transportation Safety Board, *available at* <https://www.ntsb.gov/investigations/AccidentReports/Reports/ASR1901.pdf>; the Joint Authorities Technical Review, see: https://www.faa.gov/news/media/attachments/Final_JATR_Submittal_to_FAA_Oct_2019.pdf; the Inspector General of the Department of Transportation, *available at* <https://www.oig.dot.gov/sites/default/files/FAA%20Oversight%20of%20Boeing%20737%20MAX%20Certification%20Timeline%20Final%20Report.pdf>; the Secretary of Transportation’s Special Committee to Review the Federal Aviation Administration’s Aircraft Certification Process, *available at* <https://www.transportation.gov/sites/dot.gov/files/2020-01/scc-final-report.pdf>; the Safety Oversight and Certification Advisory Committee and any special subcommittees thereof, *available at* <https://documentcloud.adobe.com/link/track?uri=urn:aaid:scds:US:99adf264-1f64-4873-970d-bace5f14f967#pageNum=1>; and the FAA’s Technical Advisory Board, *available at* https://www.faa.gov/foia/electronic_reading_room/boeing_reading_room/media/737_Technical_Advisory_Board_Final_Report.pdf. Note that there were also partisan Congressional investigations conducted, however House Republicans did not actively participate in these investigative efforts nor rely on them when drafting aircraft certification reform legislation.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Summary of the FAA’s Review of the Boeing 737 MAX: Return to Service of the Boeing 737 MAX Aircraft* (November 18, 2020); *available at* https://www.faa.gov/foia/electronic_reading_room/boeing_reading_room/media/737_RTS_Summary.pdf; (stating review took more than 22 months and represented more than 60,000 FAA hours of review, certification testing, and evaluation of pertinent documents).

¹⁶ *Consolidated Appropriations Act, 2021*, Division V (P.L. 116-260; December 27, 2020).

¹⁷ H. Comm. on Transportation and Infrastructure, 116th Cong., *House T&I and Senate Commerce Committee Leaders Applaud Passage of Comprehensive Aircraft Certification Reform and Safety Legislation* (Dec. 22, 2020), *available at* <https://transportation.house.gov/news/press-releases/house-tandi-and-senate-commerce-committee-leaders-applaud-passage-of-comprehensive-aircraft-certification-reform-and-safety-legislation>.

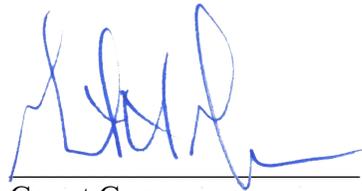
Taking Director-General Ky at his word, his public statement on EASA's change in validation practice would apply to all U.S. certificated aircraft and aerospace products. The Director-General justified his plan to change EASA's certification processes to a European political body by casting baseless aspersions on the FAA's ability to certificate U.S. aircraft and products, and by misinterpreting the bilateral safety agreement itself. As the United States Secretary of Transportation, it is your responsibility to uphold the United States' standing on aviation safety throughout the world and to ensure that the US-EU BASA is not undermined by EASA with unfounded claims made by the Director-General. Put simply, if EASA follows through on making an "across-the-board" certification and validation process change away from BASA's tenant of reciprocity, it would be a clear violation of that agreement and damage the long-standing professional relationship between the FAA and EASA.

Therefore, we request that the Department of Transportation seek an immediate clarification of EASA's plans, ensure that EASA's plans do not violate the BASA, and unequivocally and publicly express support of and confidence in the FAA's certification process and professionals. If you have questions, please contact Holly Woodruff Lyons, Republican Staff Director, Subcommittee on Aviation at (202) 226-3220.

Sincerely,



Sam Graves
Ranking Member



Garret Graves
Ranking Member
Subcommittee on Aviation