



Der Generalsekretär

Mr Stefan WEHRMEYER

306626 12.04.2012

(Letter sent by email)

Dear Mr Wehrmeyer,

Subject: Your application for access to documents
Our reference: A(2012) 2458 (to be quoted in future correspondence)

On 29 February 2012 the European Parliament received your request for access to documents under Regulation (EC) No. 1049/2001 regarding public access to European Parliament, Council and Commission documents¹.

This request referred to the opinions delivered by the Legal Service of the European Parliament on the Anti-Counterfeiting Trade Agreement (ACTA)

- SJ-0661/11, which corresponds to the opinion on request of the Legal Affairs Committee (JURI),
- SJ-0501/11, which corresponds to the opinion on request of the Committee on International Trade (INTA).

On 15 March 2012 the Transparency Unit of the European Parliament sent you the (partially disclosed) versions of the requested documents which are already available to the public while asking you to inform the unit in question if these documents did not satisfy your request.

On 28 March you notified Parliament that the documents you received did not satisfy your request since they were heavily redacted. As a result, you requested access to the "complete and un-redacted documents".

As explained in the emails sent by the Transparency Unit, I consider your application of 28 March in your favour as an "initial application" under Article 7(1) of the Regulation allowing you, if you still consider it appropriate, to submit at a later date a confirmatory application.

The opinion drafted on request of the JURI Committee is divided into three chapters: Introduction (I.), Legal Analysis (II.), and Conclusions (III.). It concerns the conformity of ACTA with EU Law and the conformity of ACTA with existing international obligations of EU and its Members States.

¹ OJ L 145 of 31 May 2001, p. 43

It also includes a previous legal opinion delivered to INTA Committee and concerns various issues relating to ACTA. This second opinion is divided into four chapters: Introduction (I.), Background (II.), Legal Analysis (III.), and (IV.) Conclusions. Chapter III deals in particular with the questions raised by the INTA Committee as concerns the legal basis proposed by the Commission, ACTA's conformity with the *acquis communautaire* and with existing international obligations of the EU and its Member States, as well as the question of transparency of the preparatory works of the negotiations and the conformity of ACTA with Parliament's position on the IPRED2 proposal. The legal analysis in this chapter is divided into 4 subchapters (Questions) addressing the different elements of INTA's request for opinion.

Following detailed analysis of the legal opinions in question, I hereby inform you that Parliament has decided to grant partial access to the legal opinions in application of Article 4 (6) of Regulation (EC) No. 1049/2001.

As far as the legal opinion to JURI is concerned, chapter I. can be made public; as for the legal opinion to INTA, chapters I and II, Question 4 contained in Chapter III and the conclusion to question 4 contained in Chapter IV can be made public.

Regarding the remaining parts of the legal opinions, public access is refused for the reasons outlined below in application of Article 4(1)(a)(third indent), (2)(second indent) and (3)(first paragraph) of Regulation (EC) No. 1049/2001.

Firstly, in particular, pursuant to Article 4.1a, third indent of Regulation (EC) No. 1049/2001, the Institutions are entitled to refuse access to documents "*where disclosure would undermine the protection of the public interest as regards international relations*". The exceptions foreseen in this paragraph are not submitted to a possible overriding public interest.

Although negotiations have already been accomplished, the process of signature and conclusion as well as the ratification of the ACTA agreement is currently ongoing. The safeguarding of the due conclusion of international agreements between the EU and third countries is covered by the protection of this specific public interest.

Secondly, under Article 4(2) second indent of Regulation (EC) No. 1049/2001, "*The Institutions shall refuse access to a document where disclosure would undermine the protection of legal advice*". The process of legal advice provided by the Legal Service to political bodies of the European Parliament in the context of the ongoing ratification process of ACTA has not yet been completed.

In this regard, I would like to underline that the requested legal opinions only constitute *one* element within an ongoing process of legal advice being provided by the Legal Service to political bodies of the European Parliament in the context of the ongoing ratification process. Disclosure at this stage of one of these elements of legal advice which depends on one another would seriously interfere with and would therefore undermine the further provision of legal advice to the Institution on this matter within the framework of this ongoing process. Indeed, the Legal Service would no longer be in a position to provide frank, objective and complete advice to the Institution if parts of the legal advice provided are disclosed before the ongoing process of legal advising has been accomplished. I therefore hold the view that

disclosure of the requested legal opinions would undermine the protection of legal advice.

Thirdly, according to the first paragraph of Article 4(3) of the Regulation No. 1049/2001, *"access to a document, drawn up by an institution for internal use which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure"*.

The legal opinions under consideration have been drawn up as advice for the two committees of the European Parliament in the context of the EU ratification process of the Anti-Counterfeiting Trade Agreement (ACTA) which is currently ongoing. The Members of the European Parliament should first be given the opportunity to form their own position on the matter under consideration, taking into account legal as well as other arguments. The conduct of internal debates in the competent Committees and in Parliament in general would be seriously undermined if access to the legal opinion was given at this early stage.

As regards the existence of an overriding public interest within the meaning of Article 4(2) and 4(3) of the Regulation, you did not state any one which would nevertheless justify the disclosure of the remainder of the documents. At this stage Parliament cannot identify any such overriding public interest either.

Parliament takes in consequence the view that wider disclosure of the requested documents would undermine the safeguards recognised under Article 4. 1a, third indent, Article 4(2), second indent, and Article 4(3), first paragraph of Regulation (EC) No. 1049/2001.

I would however like to advise you that, pursuant to Article 7(2) of the Regulation, you are entitled to submit within 15 working days of receipt of this letter, a confirmatory application with a reasoned request for Parliament's position to be reconsidered.

Yours sincerely,



Klaus WELLE

Annexes :

Expunged versions of:

- legal opinion for Legal Affairs Committee
- legal opinion for the Committee on International Trade