



## EUROPEAN COMMISSION

Directorate-General for Trade

The Director General

Brussels, 15 July 2014  
Trade/dga2.e.1 (2014) 2398204

Ms Maria Swietlik

By email:  
[ask+request-1211-f4e0aa7f@asktheeu.org](mailto:ask+request-1211-f4e0aa7f@asktheeu.org)

**Subject: Document request pursuant to Regulation (EC) No 1049/2001 (GESTDEM 2014/1209)**

Dear Ms Swietlik,

Thank you for your request Gestdem 2014/1209, received on 23 February 2014, for access to documents under Regulation No 1049/2001<sup>1</sup> regarding public access to European Parliament, Council and Commission documents ("the Regulation").

We understand from your request that you would like to have access to:

*1) The content of all correspondence (including e-mails) between the European Commission and the Polish Government (especially Polish Ministry of Economy) on*

- a) The Comprehensive Economic and Trade Agreement (CETA) and*
- b) The Transatlantic Trade and Investment Partnership (TTIP).*

*2) Polish negotiating positions or other documents presenting the opinions of the Polish authorities on the proposed provisions of CETA and TTIP agreements regarding to intellectual property, held by the Commission.*

*3) What individuals and organisations (private, social or public) have so far (up to the date of application) access to all or part of the proposed provisions of CETA and TTIP agreements. In addition you ask for:*

- a) The names of these institutions and the names and positions of persons,*
- b) Date of availability of documents,*
- c) Their scope and*

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<sup>1</sup> OJ L 145, 31.5.2001, p. 43.

*d) The purpose of availability, as well as*

*e) The legal basis on which this access was granted.*

Before I go into the details of your requests concerning both CETA and TTIP documents let me draw your attention to the General Court rulings concerning the access to documents of international agreements.

As you know, the success of the negotiations depends to a large extent on the protection of objectives, tactics and fall-back positions of the parties involved. While the Commission is highly committed to the principle of transparency, a certain level of discretion and special care in handling its negotiating documents is essential. Only by safeguarding this discretion can the Commission preserve the room for manoeuvre required to lead the negotiations to a conclusion which promotes the EU interest.

Indeed, as the General Court recognised in case T-301/10<sup>2</sup>, *the negotiation of international agreements can justify, in order to ensure the effectiveness of the negotiation, a certain level of discretion to allow mutual trust between negotiators and the development of a free and effective discussion. [...] [A]ny form of negotiation necessarily entails a number of tactical considerations of the negotiators, and the necessary cooperation between the parties depends to a large extent on the existence of a climate of mutual trust.*

The General Court acknowledged furthermore that *[i]n the context of international negotiations, the positions taken by the European Union are, by definition, subject to change depending on the course of those negotiations, and on concessions and compromises made in that context by the various stakeholders. [...] [T]he formulation of negotiating positions may involve a number of tactical considerations of the negotiators, including the European Union itself. In that context, it is possible that the disclosure by the European Union, to the public, of its own negotiating positions, even though the negotiating positions of the other parties remain secret, could, in practice, have a negative effect on the negotiating position of the European Union.*<sup>3</sup>

Furthermore, such discretion is also required to safeguard the mutual trust between the negotiating parties, which is an essential precondition for the success of the negotiations. Indeed, some of the documents requested include direct and indirect references to the negotiation positions of the US and Canada. Release of the latter position would undermine the trust of the US and Canada in the confidentiality of the negotiations, and therefore also the chances of reaching successful negotiation results. The fact that both negotiating partners have pledged to respect the confidentiality of the negotiations within the limits of their respective access to documents rules only reinforces this conclusion.

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<sup>2</sup> Judgment of the General Court of 19 March 2013 in case T-301/10, *Sophie in 't Veld v European Commission*, paragraph 119.

<sup>3</sup> *Ibid*, paragraph 125.

In the above-mentioned judgment<sup>4</sup>, the General Court confirmed that *in the context of international negotiations, unilateral disclosure by one negotiating party of the negotiating position of one or more other parties, even if this appears anonymous at first sight, may be likely to seriously undermine, for the negotiating party whose position is made public and, moreover, for the other negotiating parties who are witnesses to that disclosure, the mutual trust essential to the effectiveness of those negotiations. As the Commission emphasises, establishing and protecting a sphere of mutual trust in the context of international relations is a very delicate exercise.*

Let me address separately your request on CETA and TTIP documents.

### **Your request concerning CETA documents**

*1) Correspondence (including e-mails) between the European Commission and the Polish Government (especially Polish Ministry of Economy)*

We have identified 75 documents (see Annex I) falling under the scope of your request out of which

- 8 documents concern notes sent by the Polish Government to the Trade Policy Committee (TPC) and
- 67 are negotiating documents: position papers, non-papers, draft texts and round reports, with security classifications as "EU Restricted" or "EU Limited" sent by the European Commission to the TPC and to the Committee on International Trade (INTA) in the European Parliament.

Having examined these documents under the provisions of the Regulation, I regret to inform you that your application cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

As you may know, Commission President José Manuel Barroso and Canadian Prime Minister Stephen Harper have reached on 18 October 2013 a political agreement on the key elements of a Comprehensive Economic and Trade Agreement (CETA) with Canada. Please note, however, that based on this political agreement, technical discussions still have to be completed so as to finalise the legal text of the agreement.

Putting the requested documents at this point in time into the public domain would be prejudicial to the climate of confidence necessary for a successful outcome of the technical

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<sup>4</sup> Paragraph 126.

discussions, and consequently harm the EU's international relations and affect the outcome of the negotiations which are still ongoing at technical level. Furthermore the unilateral and asymmetrical release, by the Commission, of its negotiating documents would be an additional factor weakening the EU's position in the negotiations.

For these reasons, access to the documents requested has to be refused based on the exception defined in Article 4(1)(a), third indent of the Regulation, and the above mentioned case law, as their release would result in a real and non-hypothetical risk to the international relations protected by that provision.

*2) Polish negotiating positions regarding to intellectual property.*

No documents concerning the Polish negotiating positions regarding to intellectual property were identified.

*3) What individuals and organizations (private, social or public) have so far (up to the date of application) access to all or part of the proposed provisions of CETA*

The documents to which you request access are all negotiating documents: position papers, non-papers, draft texts and round reports, with security classifications as "EU Restricted" or "EU Limited". Within the Commission, they are accessible only to a very limited number of staff, on a strict need-to-know basis and under restrictive and secure conditions. Some of the documents have been shared with the Canadian authorities in the framework of the negotiations, and all documents have been shared with the Member States via the TPC and the INTA Committee in the European Parliament, this has occurred under very restrictive and secure conditions.

Beyond Member States and the European Parliament, no other individuals or organisation have had access to the proposed CETA provisions.

**Your request concerning TTIP documents**

*1) Correspondence (including e-mails) between the European Commission and the Polish Government (especially Polish Ministry of Economy)*

We have identified 41 documents (see Annex II) falling under the scope of your request out of which

- 3 documents concern notes sent by the Polish Government to the TPC and
- 38 are negotiating documents: position papers, non-papers, draft texts and round reports, with security classifications as "EU Restricted" or "EU Limited" sent by the

European Commission to the TPC and the INTA Committee in the European Parliament.

Having examined these documents under the provisions of the Regulation, I regret to inform you that your application cannot be granted, as disclosure is prevented by exceptions to the right of access laid down in Article 4 of this Regulation.

Putting the requested documents at this point in time into the public domain would undermine the position of the Commission in the negotiations and, more generally, its relations with the US and other negotiating partners as it would provide indications regarding the negotiation approach and tactics followed by the EU in its negotiations with the US, and would hence weaken the EU's position in these and its other, ongoing and future, bilateral negotiations. Furthermore the unilateral and asymmetrical release, by the Commission, of its negotiating documents would be an additional factor weakening the EU's position in the negotiations.

For these reasons, access to the documents requested has to be refused based on the exception defined in Article 4(1)(a), third indent of Regulation, and the above mentioned case law, as their release would result in a real and non-hypothetical risk to the international relations protected by that provision.

*2) Polish negotiating positions regarding to intellectual property.*

No documents concerning the Polish negotiating positions regarding to intellectual property were identified.

*3) What individuals and organizations (private, social or public) have so far (up to the date of application) access to all or part of the proposed provisions of TTIP*

The documents to which you request access are all negotiating documents: position papers, non-papers, draft texts and round reports, with security classifications as "EU Restricted" or "EU Limited". Within the Commission, they are accessible only to a very limited number of staff, on a strict need-to-know basis and under restrictive and secure conditions. Some of the documents have been shared with the US authorities in the framework of the negotiations, and all documents have been shared with the Member States via the TPC and the INTA Committee in the European Parliament, this has occurred under very restrictive and secure conditions.

Beyond Member States and the European Parliament, only the members of the TTIP Advisory Group have access to documents containing the EU negotiating position in the negotiations. You can find further details of the terms of reference of the group as well as of its composition in <http://ec.europa.eu/trade/policy/in-focus/ttip/resources/>

To conclude we have also considered whether partial access can be granted to these documents, pursuant to Article 4(6) of the Regulation. However, the requested documents are entirely covered under the aforementioned exception as it is impossible to disclose any parts of these documents without undermining the protection the EU's international relations, as explained above.

If you would like the position taken by our service to be reviewed, you should write to the Commission's Secretary-General at the address below, confirming your initial request. In accordance with Article 7.2 of the Regulation, you have fifteen working days in which to do so from receipt of this letter, after which your initial request will be deemed to have been withdrawn.

The Secretary-General will inform you of the result of this review within fifteen working days from the registration of your confirmatory request, either granting you access to the document or confirming the refusal. In the latter case, you will be informed of how you can take further action.

All correspondence should be sent to the following address:

European Commission  
Secretary-General  
Transparency unit SG-B-5  
BERL 5/327  
B-1049 Brussels

Or by email to: [sg-acc-doc@ec.europa.eu](mailto:sg-acc-doc@ec.europa.eu)

Yours sincerely,



Jean-Luc DEMARTY

Annex I – List of CETA documents

Annex II – List of TTIP documents