



EUROPEAN COMMISSION  
Directorate-General for Trade

The Director General

Brussels, 15 December 2014  
Trade/dga2.e.1 (2014) 4266458

Ms Maria Swietlik  
Ursynowska St. 22, app.2  
02-605 Warsaw  
Poland

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

**Subject: Document request pursuant to Regulation (EC) No 1049/2001 (GESTDEM 2014/4883)**

Dear Ms Swietlik,

Thank you for your request Gestdem 2014/4883, received on 11 October 2014, for access to documents under Regulation No 1049/2001<sup>1</sup> regarding public access to European Parliament, Council and Commission documents ("Regulation 1049/2001").

Your request follows up on our reply sent to you on 15 July 2014 to a request asking for:

*-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).*

*-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.*

Concerning CETA, in our reply we identified 75 documents falling under the scope of your request out of which

- 8 documents concerned notes sent by the Polish Government to the Trade Policy Committee (TPC) and

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

- 67 were 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.

Concerning TTIP, in our reply we identified 41 documents falling under the scope of your request out of which

- 3 documents concerned notes sent by the Polish Government to the TPC and
- 38 were 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.

In our reply we informed you that your application could not be granted, as disclosure was prevented by exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

In your present request you request access to the Poland's Notes to the Trade Policy Committee:

*"a) Regarding to TTIP agreement documents dated: 1/10/2013 (only one that is described as "Limited" in the list), 27/11/2013, 30/01/2014;*

*b) Regarding to CETA agreement documents dated: 1/09/2009, 17/02/2010, 2/12/2010, 18/01/2012, 16/05/2012, 13/09/2012, 8/11/2012, 5/06/2013."*

Furthermore, you state that since the above-mentioned documents were NOT specified as Restricted or Limited (with one exception – see above) on two lists delivered in our previous response you expect no further delay in making them public.

We have identified following 11 documents as falling under the scope of your present request:

1. Poland's offensive interests in agriculture products related to TTIP, dated 01/10/2013
2. Polish Comments on TTIP: non paper on raw materials, dated 27/11/2013
3. EU initial tariff offer – Polish comments, dated 30/01/2014
4. Economic Integration Agreement with Canada - PL comments, dated 17/04/2009
5. EU-Canada CETA negotiations process - Polish position, dated 17/02/2010
6. Poland's comments on selected draft provisions of the CETA, dated 02/12/2010
7. Revised list of PL offensive interests in response to Canada's Second Tariff Offer, dated 18/01/2012
8. Poland's position on the protocol on rules of origin for the CETA agreement, dated 16/05/2012
9. Poland's comments on the selected provisions of the draft CETA Agreement, dated 13/09/2012

10. Poland's comments on protocol on rules of origin to a future CETA agreement, dated 08/11/2012
11. Poland's comments on the state of play of the CETA negotiations - car package, dated 20/06/2013

Our decision to refuse access to the documents requested in your previous request was taken based on the exception defined in Article 4(1)(a), third indent of Regulation, and the mentioned case law, as their release would have resulted, in a real and non-hypothetical risk to the international relations protected by that provision.

We have examined once again the above documents, subject to the current decision, under the provisions of Regulation 1049/2001 and I regret to inform you that I need to confirm the initial decision of 15 July 2014 refusing access to these documents, as disclosure is still prevented by the exceptions to the right of access laid down in Article 4 of Regulation 1049/2001.

When submitting its positions and/or comments to DG Trade, Poland makes direct references to the negotiating positions of the EU, Canada and/or the US in various negotiating areas, at the time under negotiation in the case of CETA, and currently being negotiated in the case of TTIP.

Putting that information in the public domain would harm the EU's international relations as it would disclose our and our negotiating partner's positions which might be prejudicial to

- a) the climate of confidence and trust necessary for the final decision to formally conclude the CETA agreement expected in 2015, and
- b) the position of the Commission in the TTIP negotiations and, more generally, its relations with the US,

and therefore jeopardise the EU's international relations (Article 4(1)(a), third indent of Regulation 1049/2001). Furthermore, release of these documents would also provide indications to other negotiating partners of the EU as regards the negotiation approach and tactics followed and being followed by the EU in the CETA and TTIP negotiations, and would hence weaken the EU's position in its other, ongoing and future, bilateral negotiations.

In addition to the case law mentioned in our reply of 15 July 2014, I would like to draw your attention to a recent judgment of the Court in case C-350/12 P<sup>2</sup>, in which it confirmed that, whilst the principle of transparency cannot be ruled out in international negotiations<sup>3</sup>, the institutions *must be recognised as enjoying a wide discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by those exceptions could undermine the public interest*. In that same judgment<sup>4</sup>, the Court acknowledged that that the

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<sup>2</sup> Judgment of the Court of 3 July 2014 in case C-350/12 P, *Council of the European Union v Sophie in 't Veld*, paragraph 63.

<sup>3</sup> Ibid, paragraph 76.

<sup>4</sup> Ibid, paragraph 109.



Council was *justified in refusing access to those parts of the document requested that related to the specific content of the proposed agreement and the strategic objectives which the European Union pursued in the negotiations*. Consequently, the Court concluded *'that public participation in the procedure relating to the negotiation and the conclusion of an international agreement is necessarily restricted, in view of the legitimate interest in not revealing strategic elements of the negotiations'*<sup>5</sup>.

As to your arguments on documents not being sensitive please note that the General Court<sup>6</sup> in Case T-465/09 has recognised that *'[...] the mere fact that a document is not classified as 'sensitive' within the meaning of Article 9 of Regulation No 1049/2001 cannot prevent the exceptions provided for in Article 4(1)(a) thereof from applying[...]'*

Consequently, the fact that a document is classified as "sensitive" does not imply that the document can be automatically disclosed in the same way that a document marked as "Restricted" or "Limited" is not automatically excluded from disclosure, as foreseen in Regulation 1049/2001. A decision to grant or refuse access is taken following an analysis of whether the disclosure of the document would or not undermine the protection of the interests foreseen in Article 4 of Regulation 1049/2001.

For the reasons explained above, access to the documents requested has to be refused based on the exception defined in Article 4(1)(a), third indent of Regulation 1049/2001, and the case law mentioned in our current and previous replies, as their release would result in a real and non-hypothetical risk to the international relations protected by that provision.

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.

Although in this particular request we cannot respond positively to your request for access to documents I would like to stress that the Commission is committed to making trade negotiations as transparent as possible and to improving access to documents. In this context I would draw your attention to the Communication adopted by the Commission to further boost transparency in TTIP negotiations. The Commission aims to implement the new measures before the end of the year. Further details on the announcement are available on DG Trade's website in <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1205>.

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

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<sup>5</sup> Ibid, paragraph 102.

<sup>6</sup> Judgment of the General Court of 3 October 2012 in Case T-465/09 Jurašinović v Council, paragraph 47.

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,

A handwritten signature in blue ink, consisting of a stylized 'J' and 'L' followed by a horizontal line.

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Jean-Luc DEMARTY