



Европейски парламент Parlamento Europeo Evropský parlament Europa-Parlamentet Europäisches Parlament
Euroopa Parlament Ευρωπαϊκό Κοινοβούλιο European Parliament Parlement européen Parlaimint na hEorpa
Europski parlament Parlamento europeo Eiropas Parlaments Europos Parlamentas Európai Parlament
Parlament Ewropew Europees Parlement Parlament Europejski Parlamento Europeu Parlamentul European
Európsky parlament Evropski parlament Euroopan parlamentti Europaparlamentet

Ildikó GÁLL-PELCZ
Vice-President

D 302095 04.02.2016

REGISTERED LETTER
WITH ACKNOWLEDGEMENT OF RECEIPT

[REDACTED]
Lawyer – Environmental Justice
ClientEarth,
36 Avenue de Tervueren (Box 17),
1040, Brussels

Dear [REDACTED]

Subject: Your confirmatory application for access to European Parliament documents
Our reference: A(2015)13546 C (to be quoted in any future correspondence)

On 14 December the European Parliament received your confirmatory application, in accordance with Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents.

The application concerns *"all documents connected to the trilogue meetings and technical meetings taking place between representatives of the Parliament, the Council and the Commission in connection with the Commission's Proposal for Directive on the protection of undisclosed know-how and business information ("Trade secrets") against their unlawful acquisition, use and disclosure which became available since the previous request by ClientEarth of 29 September 2015"*. You refer in particular to four-column documents, minutes of the meetings, documents used to brief the relevant parliamentary committee about the trilogue meetings and position papers sent by industry representatives.

In the reply to your initial request of 30 October for the same documents, sent by e-mail on 23 November 2015, Parliament had provided one document: the agenda of the political trilogue meeting held on 27 October 2015 (second trilogue). The documents concerning this trilogue consisted of this agenda and a four-column document (dated 28/09/2015).

It should be noted that the four-column document dated 28/09/2015 had been already partially disclosed in the context of your previous request A(2015)11910, a procedure that is now closed. Consequently, Parliament considered that the only document falling under the scope of your most recent request was the referred agenda. No position papers had been examined at the trilogue meeting and no minutes or other documents were drafted.

While Parliament did not refuse access to any document in its possession falling within the scope of your request, in your confirmatory application you claim that Parliament's alleged refusal to grant access to the requested documents is in breach of Article 2 Regulation (EC) No 1049/2001 ("*Failure to record the activities of the European Parliament*") and that it involves a "*lack of consistency regarding Parliament's approach to record keeping in the context of trilogue negotiations*".

Pursuant to Rule 116 (4) and (6) of the Rules of Procedure of the European Parliament and to Article 15 of the Decision of the Bureau of the European Parliament of 28 November 2001, on public access to European Parliament documents, I, as Vice-President responsible for matters relating to access to documents, am responding to your confirmatory application, on behalf of and under the authority of the Bureau.

Preliminary remarks

In earlier replies concerning the same legislative file (2013/0402(COD))¹ it was explained to you that, during trilogue negotiations, meetings held with a view to reach agreement take place in an informal setting and no standard practice/obligations exists as regards the nature of documents to be drafted.

Indeed, the Treaty (Art. 294 TFEU) and the Joint Declaration on practical arrangements for the codecision procedure² set out the general rules and guidelines, but have left the institutions with room for manoeuvre and flexibility to define and put in place the adequate working arrangements. The negotiating teams determine, for each individual proposal, the most suitable approach, adapting to the requirements of the political circumstances in which negotiations take place.

As set out in Parliament's Rules of Procedure³, documents to be discussed in trilogues shall take the form of a document indicating the respective positions of the institutions involved, as well as the possible compromise solutions. This is the established practice of producing joint four-column documents, developed as a pragmatic way of ensuring that progress is recorded and that all parties share the same information. They also allow the negotiators to efficiently and transparently inform their respective sides about the state of play at any given moment.

On this basis, after each trilogue meeting, the negotiating team reports back to the following meeting of the committee responsible (Rule 73(4)), and any agreed text resulting from trilogues is put to a public vote in the committee responsible (Rule 73(5)).

Multicolumn documents, conceived as joint documents, are thus considered the main working tool to guarantee the transparency of the negotiation process, with no obligation to create other documents.

Non-existence of additional documents falling under the scope of Regulation (EC) No 1049/2001

In your confirmatory application, you claim that there exist documents falling under the scope of your request, which allegedly are in the possession of the rapporteur and shadow rapporteurs, and that such documents should be identified and disclosed.

However, Parliament is not aware whether individual Members hold any documents concerning the procedure at stake, given that such documents are not recorded

¹ Letter of 19 October 2015 (Ref. D317087) and letter of 15 December 2015 (Ref. D321726)

² Joint Declaration of the European Parliament, the Council and the Commission of 13 June 2007 on practical arrangements for the codecision procedure, OJ C 145, 30.6.2007, p 5.

³ Rule 73(4).

by Parliament. I can therefore confirm that no additional documents falling within the scope of the right of access under Regulation (EC) No 1049/2001 have been identified.

Inadmissibility of your claim of alleged breach of Article 2 of Regulation (EC) No 1049/2001

In your confirmatory application, you claim that Parliament's failure to record activities is in breach of Article 2 of Regulation (EC) No 1049/2001. However, such a claim has to be considered inadmissible as it falls outside of the scope of Regulation (EC) No 1049/2001. As I pointed out in my previous replies, the scope of the Regulation, as defined in its Article 2(3), extends only to "*documents held by an institution, that is to say, documents drawn up or received by it and in its possession*". Parliament understands that in the absence of any documents, there is no obligation for the institutions to produce documents for the purpose of an application, as stated by relevant case law⁴. This is the case for the trilogue meetings, where the Rules of Procedure do not foresee, as indicated above, the drafting of any minutes.

In addition, the lack of minutes of trilogue meetings cannot be considered arbitrary and unpredictable as each negotiating team, while guaranteeing the overall effectiveness of the negotiation process by means of the shared multicolumn documents, has the flexibility to decide on its specific working methods.

I would like to add that, even in the case where the institution were to be considered under a legal obligation to record its activities, such an obligation could never be the subject matter for an initial application under Article 7 or a confirmatory application under Article 8 of Regulation (EC) No 1049/2001.

In conclusion, I consider your confirmatory application inadmissible to the extent that it claims that Parliament's alleged failure to record activities is in breach of Article 2 of Regulation (EC) No 1049/2001.

Alleged lack of consistent approach as regards records of trilogue negotiations

Referring to previous requests by ClientEarth to the European Parliament for public access to trilogue documents in the context of a different procedure, you recall that Parliament provided partial access to identified documents falling under the scope of the request, consisting of feedback notes. You consider that Parliament's reply to that request shows that in certain cases there exist records of the trilogue activities and you criticise what you consider to be a significant reduction of the transparency in the legislative procedure.

In this respect, I would like to stress that the fact that additional documents were disclosed to you under a previous request concerning a different legislative procedure does not have any legal relevance as regards your present application.

Finally, I can only underline once more the flexibility each negotiating team enjoys when it comes to decide on the most suitable work methods for the trilogue negotiations.

Conclusion

On the basis of the foregoing I can only confirm that Parliament does not have in its possession any other documents falling under the scope of your request and that your claim of alleged breach of Article 2 of Regulation (EC) No 1049/2001 is inadmissible.

I would draw your attention to the means of redress available against this decision according to Article 8 of Regulation (EC) No 1049/2001. You may either bring

⁴ Case C-127/13 P, *Strack v Commission*, paragraphs 44 to 46.

proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in the Treaty on the Functioning of the European Union. I equally draw your attention to the fact that filing a complaint with the European Ombudsman does not have suspensory effect.

Yours sincerely,



Ilidkó GÁLL-PELCZ)