



Der Generalsekretär

Mr Joe McNamee
European Digital Rights
Rue Montoyer 39/9
B-1000 Brussels

204061 29.09.2011

Dear Mr McNamee,

Subject: Your application for access to documents
Our reference: A(2011)10557 (to be quoted in future correspondence)

On 29 August 2011 the European Parliament received your request for access to documents under Regulation (EC) n° 1049/2001 regarding public access to European Parliament, Council and Commission documents¹. Your application relates to *all preparatory documents* in possession of the International Trade Committee of the European Parliament with regard to the Anti-Counterfeiting Trade Agreement (ACTA).

Parliament has recently been informed about the Commission's referral of the agreement to the Council of Ministers. Negotiations have been concluded and a draft agreement has been initialled but the ACTA has not yet been formally signed by all the negotiating parties. The finalised text of the agreement is at present subject to legal/linguistic review.

It is only after the completion of this procedure that the Council seizes Parliament according to Article 218 of the Treaty on the Functioning of the European Union and requests the consent of Parliament. National Parliaments of the other ACTA partners will also proceed with ratification.

The European Parliament did not participate in the negotiation process and, in consequence, does not have in its possession all preparatory documents. It was only after the entry into force of the Lisbon Treaty, which confers new competences on the Parliament in the field of international agreements, and following signature of the Framework Agreement on relations between the European Parliament and the European Commission², that the Commissioner for International Trade instructed DG Trade to provide the EP Committee on International Trade with the documents which DG Trade was forwarding to the Council's Trade Policy Committee. This instruction was given in order to ensure that Parliament is fully informed of the stages of the negotiations and is able to provide its informed consent to the Agreement.

¹ OJ L 145 of 31 May 2001, p. 43

² OJ L 304 of 20 November 2010, p. 47

On that basis, Parliament has been provided with dedicated oral briefings to interested MEPs, while the Chair of the International Trade Committee has obtained some preparatory documents. Certain of these documents have already been made public following requests by the Parliament and contacts between the Commission and the ACTA negotiating partners, ensuring that all stakeholders were fully informed about the state of negotiations. As is frequently the case in multilateral trade-related negotiations, the ACTA parties agreed that negotiating documents would only be made public with the unanimous support of all.

Additionally, it must be borne in mind that since the beginning of the process the Commission has kept the public informed about the objectives and general evolution of the negotiations. The Commission has released summary reports after each negotiation round, as well as detailed and fully updated summaries of the state-of-play of the negotiations, available on DG Trade website.

Furthermore, the Commission has organised stakeholder conferences on ACTA which were open to all - citizens, industry, NGOs, press and representatives from third countries.

Parliament has welcomed this open approach by the Commission in its resolution of 24 November 2010.

Taking all this into consideration and for obvious reasons of credibility, Parliament can not unilaterally release third party classified documents subject to the obligation of confidentiality imposed by the Framework Agreement as quoted above.

Pursuant to Article 4(4) of Regulation (CE) n° 1049/2001 Parliament has consulted the Commission and Council with a view to assessing the widest possible disclosure of the documents received from the other institutions.

The following are the documents in Parliament's possession which fall within the scope of your request:

a) Draft consolidated text of the ACTA agreement

I inform you that no consolidated agreement texts were produced until the 6th round of negotiations (Korea). In consequence, Parliament has received the following:

1. Draft January 2010, after Seoul Round
2. Draft February 2010, after Guadalajara Round
3. Draft April 2010, after Wellington Round
4. Consolidated Text prepared for Public release, April 2010
http://trade.ec.europa.eu/doclib/docs/2010/april/tradoc_146029.pdf
5. Draft July 2010, after Lucerne Round
6. Draft August 2010, after DC Round
7. Consolidated Text, October 2010 after Tokyo Round.
http://trade.ec.europa.eu/doclib/docs/2010/october/tradoc_146699.pdf

As already mentioned, ACTA parties agreed that negotiation documents would only be made public with the unanimous support of all. This is the case for documents a.4 and a.7, which are annexed (Annexes a.4 and a.7) to this letter and thus released.

On the contrary, release of the other documents would undermine the protection of international relations in the sense of Article 4(1)(a), 3rd indent of Regulation (EC) n° 1049/2001, compromising the signature and conclusion of the agreement.

Indeed, at present, the decision-making process is still ongoing at national level with a view to ratification by the parliaments of the ACTA partners. Decision-making within the European Parliament has not yet been initiated.

b) Reports of the negotiating rounds

1. Document Ref. 17/09 (15 January 2009) - *Report on 4th Round of Negotiations, Paris 15-18 Dec. 2008*
2. Document Ref. 482/09 (31 July 2009) - *Report on 5th Round of Negotiations, Rabat 16-17 July 2009*
3. Document 12 February 2010 - *Report on 7th Round of Negotiations, Guadalajara 26-29 January 2010*

In this context I would like to clarify that Parliament, while having been duly briefed after every round of negotiations, reporting has not always been in written form. The European Commissioner and other members of DG Trade have regularly participated in INTA/JURI meetings in order to keep the European Parliament informed about progress made on the ACTA negotiations.

Expunged versions of these documents are enclosed (Annexes b.1, b.2 and b.3).

The ACTA partners have reaffirmed the importance of maintaining the confidentiality of their respective positions in the negotiations. As mentioned above, the agreement has not yet been signed and arbitration is still taking place at country level. Parts of these documents describe and address the EC's negotiating position vis-à-vis the other ACTA participants, as well as the EC's reflections on the positions of the other ACTA participants. The release of this information would seriously affect the EU's current relations with third countries (ACTA partners), thereby undermining the protection of the public interest as regards the EU's international relations. Consequently, these parts are also covered by the exception to the right of access laid down in Article 4(1)(a), 3rd indent of Regulation (EC) n° 1049/2001.

c) Notes and internal working papers

1. Note for the attention of the 133 Committee (24 October 2007) - *Recommendation from the Commission to the Council to authorise the Commission to open negotiations of a plurilateral anti-counterfeiting trade agreement (ACTA)*

2. Document Ref. (Council) 7759/08 (26 March 2008) - *Recommendation from the Commission to the Council to authorise the Commission to open negotiations of a plurilateral anti-counterfeiting trade agreement*
3. Document Ref. 475/08 (25 September 2008) - *Acta Information fiche*
4. Document Ref. 613/08 (21 November 2008) - *Issues relating to the Future Institutional Structure of ACTA*
5. Document Ref. 652/08 (5 December 2008) - *Issues relating to the Future Institutional Structure of ACTA*
6. Document Ref. 61/09 (4 February 2009) - *Internet & Technology Provisions: Questions for discussion*
7. Document Ref. 214/09 (27 March 2009) - *Negotiating documents – EU Comments*
8. Document Ref. 236/09 (7 April 2009) - *Summary of Key Elements under discussion*
9. Document Ref. 588/09 (30 September 2009) - *Acta Internet Chapter*
10. Document Ref. 674/09 (30 October 2009) - *Commission's analysis of the US proposal Special Requirements Related to the Enforcement of Intellectual Property Rights in the Digital Environment*
11. Note for the attention of the 133 Committee (12 October 2009) - *Draft chapter on Enforcement Procedures in the Digital Environment* sent by the US
12. Note for the attention of the INTA Committee (14 September 2010) - *Agenda of 11th round*
13. Note for the attention of the INTA Committee (3 November 2010) - *ACTA information regarding next steps*
14. Note for the attention of the INTA Committee (4 November 2010) - *Most important innovative aspects of ACTA in comparison with the prevailing international standards, and namely with the TRIPS Agreement*

As in the case of documents under b), these documents are internal notes and contain information on the EU's negotiating guidelines as well as the EC's view on the position of other ACTA partners. Release of the relevant elements would have a detrimental effect on the atmosphere of mutual trust and would limit the prospect for future cooperation, compromising in this way the signature of the agreement and the ratification procedure by each of the national Parliaments, including the consent vote by the European Parliament.

On this basis, the exception to the right of access laid down in Article 4(1)(a), 3rd indent of Regulation (EC) n° 1049/2001 applies to certain documents as a whole and partially to others.

In addition and taking into consideration that the decisional procedure concerning the ACTA agreement is not concluded, access to these parts must also be refused on the basis of Article 4(3) of the Regulation.

Access is therefore granted as follows:

Document c.1: Partial access to the Explanatory memorandum. This sets out the context and principles for the negotiations in general terms. The remaining parts, i.e. the Commission Recommendation and the Annex: Directives for the negotiations of the Agreement, are covered by the exceptions mentioned (Annex c.1).

Document c.2: Partial access. Council has proceeded with partial declassification of the document

<http://register.consilium.europa.eu/pdf/en/08/st07/st07759-ex02.en08.pdf> (Annex c.2)

Document c.3: Full access (Annex c.3)

Document c.7: Partial access (Annex c.7)

Document c.8: Full access (Annex c.8)

Document c.12: Full access (Annex c.12)

Document c.13: Full access (Annex c.13)

Document c.14: Partial access (Annex c.14)

Documents c.4, c.5, c.6, c.9, c.10, c.11: Access refused

In conclusion, Parliament takes the view that wider disclosure of the documents requested would undermine the safeguards recognised under Article 4(1)(a), 3rd indent and Article 4(3) of Regulation (EC) n° 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