



Decision on the European Commission's refusal to grant full public access to documents related to meetings of the EU-Canada Comprehensive Economic and Trade Agreement (CETA) committees (case 1264/2021/ABZ)

Decision

Case 1264/2021/ABZ - **Opened on** 26/07/2021 - **Decision on** 22/02/2022 - **Institution concerned** European Commission (No maladministration found) |

The case concerned the European Commission's refusal to grant full public access to documents concerning meetings of the Comprehensive and Economic Trade Agreement (CETA) committees. CETA committees bring together representatives of the EU and Canada to negotiate the implementation of their free trade agreement. In withholding access to parts of the requested documents, the Commission invoked exceptions under the EU's law on public access to documents, arguing that full disclosure would undermine the public interest as regards international relations and the protection of personal data.

The Ombudsman inquiry team inspected non-redacted versions of the requested documents and met with Commission representatives to obtain additional explanations. In view of the wide margin of discretion of the EU institutions in considering whether disclosure could undermine international relations, the Ombudsman considered that the Commission's decision to refuse access was not manifestly wrong. As there was no other public interest to take into consideration as regards disclosure, the Ombudsman found that the Commission was justified in its decision. The Ombudsman therefore closed the case finding no maladministration.

However, the Ombudsman notes that the complainant raises valid issues and believes that public debate on international agreements is of vital importance. Such debate cannot take place without a strong commitment to transparency on all sides.

Background to the complaint

1. The Comprehensive Economic and Trade Agreement (CETA) [1] is a free trade agreement between Canada and the European Union. It is currently applied on a provisional basis, as it has not been ratified by all EU Member States. The implementation of CETA is discussed in specialised committees, which are attended by representatives of the EU and Canada ('CETA Committees'). [2]

2. In December 2020, the complainant, a non-profit organisation advocating for consumer



rights in the food sector, asked the Commission for public access to “ *all preparatory documentation-including briefing notes, emails and other internal correspondence as well as correspondence with stakeholders - regarding all meetings of the following CETA committees: - Committee on Agriculture - Committee on Geographical Indications* ”. [3] Upon request, the complainant clarified that its request concerned the year 2020.

3. In February 2021, the Commission identified six documents as falling within the scope of the complainant’s access request:

- *“Briefing (Line to Take) for CETA Agriculture Committee of 21 September 2020, registered under reference Ares(2021)170733 (‘document 1’);*
- *Annotated agenda for CETA Agriculture Committee of 21 September 2020, registered under reference Ares(2021)171060 (‘document 2’);*
- *Briefing for debrief meeting with Member States, registered under reference ARES(2021)171277 (‘document 3’);*
- *Briefing (Line to Take) for CETA Geographical Indications Committee of 22 October 2020, registered under reference Ares(2021)171009 (‘document 4’);*
- *Annotated agenda for CETA Geographical Indications Committee of 22 October 2020, registered under reference Ares(2021)171207 (hereafter ‘document 5’);*
- *Report of meeting with OriGin before the CETA Geographical Indications meeting, Ares(2020)5488363 (‘document 6’).”*

4. The Commission granted partial access to the documents. As regards the redactions, it invoked several exceptions under the EU’s law on public access to documents (Regulation 1049/2001). It argued that full disclosure of the documents would undermine the public interest as regards international relations [4] (documents 1-5), protection of personal data [5] (document 6), as well as the decision-making process [6] (documents 1-5) and the need to protect commercial interests [7] (document 6).

5. The complainant requested the Commission to review its decision (by making a ‘confirmatory application’), excluding the redactions made to protect personal data.

6. In April 2021, the Commission reviewed its decision. It granted full access to document 3 and wider access to document 2. It confirmed the remaining redactions made in documents 1, 2, 4, 5 and 6, relying exclusively on the exceptions concerning the protection of international relations and personal data.

7. Dissatisfied with the Commission’s decision, the complainant turned to the Ombudsman. The inquiry

8. The Ombudsman opened an inquiry into the Commission’s refusal to provide full public access to the requested documents.

9. In the course of the inquiry, the Ombudsman inquiry team inspected the non-redacted versions of the five documents to which the Commission refused full access. It also met with representatives of the Commission to obtain additional explanations. [8] The complainant did not submit comments on the report on the meeting.



Arguments presented to the Ombudsman

10. The **complainant** questioned the fact that the Commission changed its reasoning when reviewing the decision at confirmatory stage. It also argued that any exception to public access should be interpreted strictly, and that the Commission had failed to explain specifically how the interests protected could be negatively affected by disclosure, as required by settled case-law. [9] The complainant also took the view that the documents at issue contained environmental information, which benefit from a wider access under EU law. [10]

11. The **Commission** argued that a strict interpretation of the exceptions did not preclude its wide discretion in applying [11] the exceptions set out in Article 4(1)(a) Regulation 1049/2001, which includes the protection of the public interest as regards international relations. It said that it had carefully assessed the documents with a view to granting the widest possible access and that it had informed the complainant of the reasons for partial non-disclosure. For instance, it had informed the complainant that disclosing parts of the redacted text would put in the public domain the EU's negotiating positions and related internal policy considerations. This information could also be used by third countries " *to bring undue pressure on the Commission in support of their own interests, unduly limit the room for manoeuvre of the EU on the international stage, and jeopardise the EU's international position* ".

12. Finally, the Commission considered that the requested documents did not contain environmental information and, in any case, information relating to emissions into the environment.

The Ombudsman's assessment

13. The Ombudsman notes that the review stage of the administrative procedure for public access to documents allows EU institutions to reassess their initial decision. [12] If the EU institutions were obliged to retain the reasoning initially put forward, the possibility of a review became devoid of purpose. The Commission could thus rely on different exceptions at the review stage.

14. The Ombudsman further notes that the EU institutions enjoy a wide margin of discretion when determining whether disclosing a document could undermine any of the public interests protected by Article 4(1)(a) of Regulation 1049/2001, including the protection of international relations. [13] Moreover, institutions are not required to prove the existence of an unequivocal risk to international relations. They only need to show that a risk is reasonably foreseeable and not purely hypothetical. [14] If plausible arguments are put forward as to why disclosure would cause harm, this test is met. The Ombudsman can only question the judgment call of the Commission if there was a manifest error in the Commission's assessment.



15. Based on an inspection of the five documents and the additional information provided by Commission representatives during the meeting with the Ombudsman inquiry team, the Ombudsman finds that the Commission was not manifestly wrong to consider that disclosing the relevant redacted parts could undermine the EU's international relations. Moreover, the Ombudsman takes the view that the Commission reasoned its decision to the extent possible, given the sensitive nature of the information contained in the documents.

16. The Ombudsman did not identify any concrete environmental information, within the meaning of the Aarhus Regulation, in the redacted parts of the documents.

17. As the redacted parts of the documents do not contain environmental information, there is no public interest that can be taken into consideration when assessing whether the public interest as regards protecting international relations justifies refusing public access to the documents.

18. In view of the above, the Ombudsman finds that the Commission was justified in partially refusing public access to the documents requested.

19. Having said that, the Ombudsman notes that the complainant raises valid concerns as regards the impact and transparency of CETA. She believes that public debate on the merits of international agreements is of vital importance, as it allows the public to scrutinise and have its say on the outcome of the decision-making processes at the EU level, which affect them directly. Such debate cannot take place without a strong commitment to transparency on all sides.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

There was no maladministration by the European Commission.

The complainant and the Commission will be informed of this decision .

Emily O'Reilly European Ombudsman

Strasbourg, 22/02/2022

[1] More information on the Agreement available at:
https://ec.europa.eu/trade/policy/in-focus/ceta/index_en.htm .

[2] More information on CETA Committees available at:
<https://trade.ec.europa.eu/doclib/press/index.cfm?id=1811>

[3] Under Regulation 1049/2001 regarding public access to European Parliament, Council



and Commission documents:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001R1049>

[4] Article 4(1)(a), third indent, of Regulation 1049/2001.

[5] Article 4(1)(b) of Regulation 1049/2001.

[6] Article 4(3) first subparagraph of Regulation 1049/2001.

[7] Article 4(2) first indent of Regulation 1049/2001

[8] The report on the meeting of the European Ombudsman's inquiry team with representatives of the Commission available at:

<https://www.ombudsman.europa.eu/en/doc/inspection-report/en/152432>

[9] Judgment of the Court of Justice of 17 October 2013 in case C-280/11 P , *Council v Access Info Europe* , paragraph 31 and judgment of the Court of Justice of 3 July 2014 in case C-350/12 P , *Council v in 't Veld* , paragraph 52.

[10] Article 2(1)(d) of Regulation 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies ('Aarhus Regulation'): <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006R1367> .

[11] Judgment of the General Court of 11 July 2018 in case T-644/16 , *ClientEarth v Commission* , paragraphs 23-25.

[12] Judgment of the Court of Justice of 6 March 2003 in case C-41/00 , *Interporc v Commission* , paragraph 31 and Judgment of the General Court of 28 March 2017 in case T-210/15 , *Deutsche Telekom v Commission* , paragraphs 82 - 83.

[13] Judgment of the General Court in case T-644/16, *ClientEarth v Commission* , paragraphs 23-25 (see footnote 11).

[14] Judgment of the General Court of 25 November 2020 in case T-166/19 , *Mario Bronckers v Commission* , paragraph 60.