

Ombudsman accepts Commission's refusal of public access to briefing notes

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The European Ombudsman, **Jacob Söderman**, has accepted that the Commission is entitled to refuse public access to briefing notes of its delegations at two meetings of the Transatlantic Business Dialogue (TABD). This follows the Ombudsman's draft recommendation earlier this year in which he asked the Commission to reconsider its refusal, based on the new rules on access to documents that came into force in December 2001 (Regulation 1049/2001).

According to the Commission: "the documents contain internal assessments of US positions and policies.... Disclosing this internal reasoning and the alternatives considered by the Commissioner would weaken the Commission's negotiating position. It would give negotiating partners an insight into possible compromises the Commission would be willing to make later in the negotiations."

The Ombudsman states that "the Commission explains clearly how disclosure of the documents could undermine the protection of the public interest as regards international relations". This is one of the exceptions provided for by Regulation 1049/2001. The Ombudsman recognises that there is a public interest in disclosure of the documents, but this exception does not provide for it to be taken into account.

The Ombudsman rejects the Commission's argument that the risk of selective quotation must be taken into account when assessing the possible harm to its decision-making process that would be caused by releasing a document. In his opinion, this is inconsistent with the right to freedom of expression laid down in the European Convention on Human Rights and the EU's Charter of Fundamental Rights.

Background

The documents were requested on behalf of Corporate Observatory Europe, a Netherlands-based non-governmental organisation. According to the citizen who turned to the Ombudsman after his request for the documents was refused, "the briefing notes are the only way to shed light effectively on the nature of the relationship between the Commission and the TABD".

TABD's own website describes the TABD as "an informal process whereby European and



American companies and business associations develop joint EU-US trade policy recommendations, working together with the European Commission and US Administration".

The Ombudsman's decision can be found on his website at:
<http://www.ombudsman.europa.eu/decision/en/011128.htm>

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