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The President

Ms Emily O'Reilly  
European Ombudsman  
1 avenue du Président Robert Schuman  
B.P. 403  
F-67001 STRASBOURG Cedex  
France

300680    10.01.2014

### **Decision Complaint 2393/2011/RA**

Dear Ms O'Reilly,

Thank you for the letter of your predecessor dated 22 July 2013 concerning the complaint brought by Mr Joe McNamee regarding his request, under Regulation (EC) No 1049/2001, for public access to documents held by the European Parliament on the Anti-Counterfeiting Trade Agreement (ACTA).

Parliament has taken note of your decision to close the inquiry with the conclusion that "*there has been no maladministration by our institution in this case*".

In your "*further remark*" you consider that, "given that Parliament's application of Regulation (EC) No 1049/2001 is affected by commitments such as the one entered into by the Commission in this case, Parliament, as a political body, could intervene with the Commission and the Council with a view to ensuring that, in future, the very nature of Parliament, which is openly to deliberate on such issues, is not undermined."

It appears from point 63 of the Decision, that in fact you suggest to invite the other institutions (Commission and Council) to carefully consider the scope of any future confidentiality agreements made by the Commission to third countries on behalf of the EU, in the context of international negotiations in order to avoid potential conflicts with the application of Regulation (EC) No 1049/2001.

I am happy to inform you that there have been some positive developments since the complaint, as set out below.

The Lisbon Treaty gave the European Parliament full co-legislation powers for adopting trade legislation and Parliament's consent is now required for the ratification of all trade agreements, while at the same time the Treaty establishes a legally binding obligation for the Commission to keep Parliament regularly informed of ongoing negotiations. In this context, Parliament has repeatedly called for greater transparency, information and involvement of relevant stakeholders during trade negotiations.

There is in fact a general belief that the failure to agree on ACTA was a consequence of the lack of good communication. Drawing on this experience and following Parliament's demands, the Commission at present takes a new approach to the preparation of future negotiations, in particular negotiations on the Transatlantic Trade and Investment Partnership (TTIP). Democratic scrutiny and greater involvement of stakeholders (interests groups and civil society) are encouraged at all stages of the procedure<sup>1</sup>:

- The start of the negotiations is published (unprecedented step of making public a number of EU's initial position papers) and information about major negotiation meetings as well as progress made in the negotiations is available on the Commission's dedicated website:

<http://trade.ec.europa.eu/doclib/press/index.cfm?id=943>

<http://ec.europa.eu/trade/policy/in-focus/ttip/resources/>

- The views of civil society are taken into consideration in the preparatory phase (public consultations, civil society dialogue) of the negotiating process and in its final stage (meetings with civil society and interested parties, information factsheets on DG TRADE website) when the outcome of the negotiations comes under scrutiny, and before being approved by the Council and the European Parliament.
- The European Parliament contributes towards the preparation of the negotiations, expressing its views through a Resolution in order to send a political message:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP7-TA-2013-0227%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>

See in particular paragraphs 21 and 23.

During the negotiations, discussions between the Commission and Parliament take place regularly at working level (specific INTA committee - US Monitoring Group, set up to scrutinise the negotiations).

As regards the specific points of concern raised by the Ombudsman (paragraphs 17 and 60 of the Decision) as to how confidentiality agreements can be reconciled with Treaty provisions on transparency and with the provisions of Regulation (EC) No 1049/2001, in the context of the TTIP negotiations no confidentiality agreement was signed. Rather it was considered preferable to make arrangements (public statement by the Chief EU negotiator) for the protection of negotiating documents, taking full account of the fact that EU institutions must comply with Regulation (EC) No 1049/2001.

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<sup>1</sup> [http://trade.ec.europa.eu/doclib/docs/2013/june/tradoc\\_151381.pdf](http://trade.ec.europa.eu/doclib/docs/2013/june/tradoc_151381.pdf)

The statement<sup>2</sup> sets out these procedures, making a clear distinction between, on one hand, the handling of information/documents related to the negotiations or development of the TTIP Agreement by the persons directly involved, in accordance with the applicable rules, and, on the other hand, public access by persons other than those directly involved.

As regards this second category of persons, requests under Regulation (EC) No 1049/2001 are to be dealt with on a case-by-case basis, as required by the regulation, i.e. any exception shall be assessed depending on the specific content of the documents requested.

Moreover, in the interest of transparency, the Commission has committed to make certain documents exclusively reflecting the EU position on the TTIP negotiations public, after consultation with the U.S. negotiating partners.

Parliament is satisfied with this outcome and will continue to remind the Commission of the need to take a pro-active position with regard to outreach and transparent engagement in international trade negotiations, as it has indeed done in its most recent positions on the subject:

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bTA%2bP7-TA-2013-0325%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN>

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+IM-PRESS+20130916IPR20024+0+DOC+PDF+V0//EN&language=EN>

Yours sincerely,



Martin Schulz

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<sup>2</sup> [http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc\\_151621.pdf](http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151621.pdf)