



Reports of Cases

Case T-301/10

Sophie in 't Veld

v

European Commission

(Access to documents — Regulation (EC) No 1049/2001 — Documents relating to the draft international Anti-Counterfeiting Trade Agreement (ACTA) — Negotiating documents — Refusal to grant access — Exception relating to the protection of the public interest with regard to international relations — Manifest error of assessment — Proportionality — Duty to state reasons)

Summary — Judgment of the General Court (Second Chamber), 19 March 2013

1. *Actions for annulment — Actionable measures — Withdrawal by the institution of the measure forming the subject-matter of the action — No need to adjudicate*
2. *Judicial proceedings — Application initiating proceedings — Formal requirements — Brief summary of the pleas in law on which the application is based — Introduction of new pleas during the proceedings — Similar requirements for claims raised in support of a plea — Grounds not set out in the application — Inadmissibility*

(Rules of Procedure of the General Court, Arts 44(1)(c) and 48(2))

3. *Institutions of the European Union — Right of public access to documents — Regulation No 1049/2001 — Exceptions to the right of access to documents — Protection of the public interest — Principle of proportionality — Judicial review — Scope — Limits*

(European Parliament and Council Regulation No 1049/2001, Arts 4(1)(a), and 6)

4. *Institutions of the European Union — Right of public access to documents — Regulation No 1049/2001 — Exceptions to the right of access to documents — Mandatory exceptions — Prior balancing of the interests at stake — Exclusion*

(European Parliament and Council Regulation No 1049/2001, Art. 4(1)(a))

5. *Institutions of the European Union — Right of public access to documents — Regulation No 1049/2001 — Exceptions to the right of access to documents — Protection of the public interest — International relations — Scope — Documents relating to negotiations for an international commercial agreement — Included*

(European Parliament and Council Regulation No 1049/2001, Art. 4(1)(a), third indent)

6. *Institutions of the European Union — Right of public access to documents — Regulation No 1049/2001 — Exceptions to the right of access to documents — Protection of the public interest — International relations — Scope — Documents relating to positions adopted by the Union in the negotiation of an international Anti-Counterfeiting Trade Agreement — Included*

(European Parliament and Council Regulation No 1049/2001, Art. 4(1)(a), third indent)

7. *Acts of the institutions — Statement of reasons — Obligation — Scope*

(Art. 296 TFEU)

1. See the text of the decision.

(see paras 70, 71)

2. See the text of the decision.

(see paras 97-100)

3. See the text of the decision.

(see paras 107-110, 200)

4. See the text of the decision.

(see paras 110, 131, 176)

5. An institution of the European Union can legally base its refusal of access solely on Article 4(1)(a), third indent, of Regulation No 1049/2001, regarding public access to European Parliament, Council and Commission documents, to protect the confidentiality of negotiating positions in international agreements.

Such negotiation can justify, in order to ensure the effectiveness of the negotiation, a certain level of discretion to allow mutual trust between negotiators and the development of a free and effective discussion.

Initiating and conducting negotiations in order to conclude an international agreement fall, in principle, within the domain of the executive, and public participation in the procedure relating to the negotiation and the conclusion of an international agreement is necessarily restricted, in view of the legitimate interest in not revealing strategic elements of the negotiations.

(see paras 118-120)

6. Disclosure of European Union positions or those of other parties in negotiations for an international Anti-Counterfeiting Trade Agreement could damage the protection of the public interest protected by Article 4(1)(a), third indent, of Regulation No 1049/2001, regarding public access to European Parliament, Council and Commission documents, as regards international relations.

It is possible that the disclosure of the European Union's positions in the negotiations could reveal, indirectly, those of other parties to the negotiations. That may be the case, in particular, when the European Union's position is expressed by reference to that of another negotiating party, or when an examination of the position of the European Union or of its evolution during the negotiations allows the position of one or more other negotiating parties to be inferred, more or less accurately.

Moreover, in the context of international negotiations, the positions taken by the European Union are, by definition, subject to change depending on the course of those negotiations, and on concessions and compromises made in that context by the various stakeholders. The formulation of negotiating positions may involve a number of tactical considerations of the negotiators, including the European Union itself. In that context, it is possible that the disclosure by the European Union, to the public, of its own negotiating positions, even though the negotiating positions of the other parties remain secret, could, in practice, have a negative effect on the negotiating position of the European Union.

Furthermore, in the context of international negotiations, unilateral disclosure by one negotiating party of the negotiating position of one or more other parties, even if this appears anonymous at first sight, may be likely to seriously undermine, for the negotiating party whose position is made public and, moreover, for the other negotiating parties who are witnesses to that disclosure, the mutual trust essential to the effectiveness of those negotiations. In that respect, the fact a document is a proposal concerning technical cooperation does not detract from the fact that it constitutes a negotiating document. Establishing and protecting a sphere of mutual trust in the context of international relations is a very delicate exercise.

Moreover, such disclosure is likely to affect both the credibility of the Commission as a negotiating partner vis-à-vis the other negotiating parties, and the relationship of all the negotiating parties — and thus of the European Union — with any third countries wishing to join the negotiations.

(see paras 123-126, 128, 139, 145, 170, 172, 175)

7. See the text of the decision.

(see para. 214)