



Letter to the European Commission requesting an opinion in the European Ombudsman's own-initiative inquiry OI/10/2014/MMN concerning transparency and public participation in relation to the Transatlantic Trade and Investment Partnership (TTIP) negotiations

Mr José Manuel Barroso

President

European Commission

BE-1049 Brussels

Strasbourg, 29/07/2014

Re: Own-initiative inquiry OI/10/2014/MMN concerning transparency and public participation in relation to the Transatlantic Trade and Investment Partnership (TTIP) negotiations — the European Commission

Dear Mr President,

The ongoing Transatlantic Trade and Investment Partnership (TTIP) negotiations are of significant public interest given their potential impact on the lives of citizens. As European Ombudsman, what is of particular concern to me is the extent to which the public can follow the progress of these talks and contribute to shaping their outcome.

I am aware that the Commission, in line with suggestions made by the European Parliament, has made real efforts to enhance the transparency of the TTIP negotiating process and to promote public participation. Notwithstanding these efforts, I know that civil society organisations recently wrote to the Commission alleging lack of transparency in relation to TTIP [1] . Some of these organisations have also lodged access to documents requests with the Commission under Regulation 1049/2001 on public access to documents [2] . A review of some of the Commission's responses made via www.asktheeu.org confirms that the Commission is trying to be helpful and constructive.

The Commission has, in response to requests, produced lists of relevant meetings and



released many documents. At the same time, the Commission seems to be encountering significant delays in replying to what appear to be numerous and broad-ranging requests for public access to documents relating to TTIP. Concerns have also been raised in relation to privileged access being given to certain external stakeholders [3] and to the unauthorised disclosure of documents in certain instances.

While I remain ready to deal with any complaint that might be submitted to me in relation to these issues, notably in relation to specific refusals of access to documents and delays, I thought that it would be helpful, both for the Commission and for citizens, for me to engage in dialogue on this matter with the Commission through an own-initiative inquiry. By seeking solutions to a range of practical issues, we can promote efficient and effective administration, thereby reducing the need for individual requests and complaints to the Commission and the Ombudsman. Moreover, a proactive approach to transparency could enhance the prospects of success of the TTIP negotiating process by enhancing its legitimacy in the eyes of citizens.

Against this background, I would appreciate it if the Commission could provide me with its views on the following:

1. What learning has the Commission achieved from the access to documents requests it has dealt with up to now in relation to TTIP? I would make the following suggestions in this regard:

(i) The Commission could consider making available on its website the many documents it has now released in response to the access to documents requests it has dealt with in relation to TTIP [4].

(ii) The Commission could consider — for the remainder of the negotiations and to the extent possible — establishing a public register of TTIP documents held by it, in line with Article 11 of Regulation 1049/2001. Such a register could contain a link to the actual document, where possible, thereby fully exploiting the possibility of proactively making documents available. While the Commission may, in line with the case-law, be justified in refusing access to many of the documents at this stage of the negotiations, the public should, to make their fundamental right of public access to documents effective, be in a position to know what documents there are. One might also entertain the hope that such an approach would encourage applicants to file more targeted access to documents requests, rather than the broad and extensive requests they are currently filing. It would be in the interests of good administration for the Commission to maintain such a register, rather than reacting to each request by trying to identify the documents in question.

If the Commission foresees practical obstacles in establishing such a register, it would be useful if it could identify them.

(iii) The Commission could consider inviting third parties, such as business organisations and interest groups, who send documents to it in relation to TTIP, to also submit non-confidential versions of those documents that could be made publicly available. The public could thus



immediately access such non-confidential versions, notwithstanding the right to request public access to the full version.

2. Could the Commission explain whether it has a policy of sharing certain negotiating documents selectively with privileged stakeholders [5] — beyond the formal TTIP Advisory Group — whom it considers can play a role in shaping the EU's negotiating position on certain subjects? [6] I would make the following comments in this regard:

(i) The Commission could consider — for the remainder of the negotiations and to the extent possible — establishing and publishing online lists of meetings it holds with stakeholders relating to TTIP, as well as the related documents [7] .

(ii) The Commission could consider reinforcing the measures it has taken to effectively ensure that confidential TTIP documents, which should not be made public, are indeed not disclosed to any third party. I am aware of the Commission's letter, dated 5 July 2013 [8] , in which it outlines a range of relevant measures. Please could the Commission explain the experience gained so far in applying these measures and whether, in light of that experience, it is considering additional measures?

The recent statement by Commissioner De Gucht that he stands ready to consider "*specific ideas on how we can further improve transparency*" gives me reason to believe that the Commission will be willing to engage with the Ombudsman in this important area. I would appreciate it if you would give the Commission's opinion on the matter as soon as possible and by 31 October 2014 at the latest. Please note that this opinion will be published on my website and I may consider giving interested third parties the opportunity to make observations.

Should your services require any further information concerning this own-initiative inquiry, please do not hesitate to contact Mr Martín Martínez Navarro (tel. +33 3 88 17 24 01), the legal officer responsible for this case.

Finally, I have today also addressed an own-initiative inquiry to the Council in relation to TTIP. A copy of my letter to the Council is enclosed, for the Commission's information.

Yours sincerely,

Emily O'Reilly

cc: Mr Uwe Corsepius, Secretary-General of the Council of the EU

Enclosure: Copy of the Ombudsman's letter to the Council in own-initiative inquiry
OI/11/2014/MMN



[1]

http://www.foeeurope.org/sites/default/files/foee_ttip-civil-society-transparency-call190514.pdf

[2] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

[3] The Ombudsman is not referring here to institutional stakeholders, such as the Council and Parliament.

[4] Many of these documents have been made available via www.asktheeu.org but it could be helpful if the Commission published them in well-defined categories on its website.

[5] The Ombudsman is not referring here to institutional stakeholders, such as the Council and Parliament.

[6] In a decision relating to public access to internal Commission documents, the Ombudsman noted that there is a risk that "insiders", with detailed knowledge and contacts, can enjoy privileged access to certain documents, while the general public, who can rely only on their fundamental right of public access to documents, are denied the same privilege. The Ombudsman found it difficult to see how in such circumstances the general interest can be safeguarded and promoted. See paragraph 23 of the Ombudsman's decision in case 2232/2011/FOR, available at:

<http://www.ombudsman.europa.eu/en/cases/decision.faces/en/54453/html.bookmark>

[7] Please see, by analogy, the Ombudsman's letter to the Commission opening an inquiry in case 852/2014/LP. It should be noted that, although such a list exists as regards the meetings in the context of the formal Civil Society Dialogue, no such list exists as regards other meetings with stakeholders in relation to this matter. For the avoidance of doubt, this suggestion does not cover meetings with other EU institutions.

[8] http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151621.pdf