

Speech by the European Ombudsman - European Movement International: TTIP Briefing with the European Ombudsman

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Speech by the European Ombudsman European Movement International: TTIP Briefing with the European Ombudsman Brussels, 29 January 2015 from 10.00 am - 11.30 am

A. Introduction

Thank you for inviting me to address you today on my involvement with the Transatlantic Trade and Investment Partnership (TTIP). Thanks, in particular, to Jo Leinen MEP, President of the European Movement International, for following up on our meeting of last March with today's event.

We are here to take a look at the results of the Ombudsman's public consultation and to outline the Ombudsman's position on TTIP transparency, as described in my decision which was published on 7 January 2015.

Why did the Ombudsman get involved in this discussion in the first place? As many of you know, the Ombudsman investigates complaints against the EU institutions. I can also open inquiries on my own-initiative. When I was elected, I announced that I would use this own initiative power to investigate systemic problems in the EU administration more strategically. The two TTIP inquiries I launched — concerning the Council and Commission — were part of a series of strategic own-initiative inquiries opened in the second half of 2014. Others covered Commission expert groups, the EU's cohesion policy, forced returns co-ordinated by Frontex, and whistleblowing.

So why TTIP? As you know, TTIP is heralded as a game-changer: the biggest bilateral free trade agreement in history; the best debt-free stimulus in town; a deal of geostrategic importance; one that will set the standard for future regional and global trade agreements. In its most ambitious form, the TTIP agreement could result in a transatlantic single market, with binding rules in a wide range of areas. Given the potential impact of TTIP on the lives of citizens, I decided to focus my attention on how this trade deal is being negotiated.

The Ombudsman is of course just one of many actors in a broad coalition when it comes to



TTIP transparency: Parliament has been at the forefront of this debate as have many civil society organisations, some of whom are represented here today.

For my part, I have sought to set the transparency tone for the remainder of these negotiations by assessing the process and publishing my position. One should not forget that traditional methods of conducting international trade negotiations, characterised as they are by confidentiality and limited public participation, are ill-equipped to generate the legitimacy necessary in such high stakes talks. A twenty-first century trade agreement, specifically one that is heralded to set the standard for future regional and global trade agreements, needs to live up to twenty-first century standards of transparency and to reflect the opportunities offered by today's technology.

B. Council and Commission

What first struck me, when I began to look into this area, was that the Council had not officially released the "negotiating mandate" which it had given to the Commission. I found this difficult to comprehend, not least because the mandate was easily accessible on the internet. I invited the Council, in the interests of transparency, the effective use of resources and encouraging public trust, to consider proactively publishing the mandate, which it did on 9 October last year.

At the same time, I opened an inquiry in relation to the Commission and it is this inquiry that I will address in-depth today. Having alluded to the Council, however, I should stress that what the Commission does in this area also affects the Council. In particular, the Commission's TTIP transparency communication of 25 November 2014 will have a direct impact on the Council because, by publishing EU negotiating texts, the Commission will in practice also make public the negotiating mandates decided by the Council. (As I explained, the TTIP mandate has already been published, but mandates for other on-going trade and investment negotiations are not yet public).

More generally, when I opened my inquiry in relation to the Commission, I saluted the efforts it had made to make these talks transparent and accessible. However, I encouraged the Commission to publish documents proactively and to make information about meetings available.

C. Public consultation

It struck me that what was missing from the picture were concrete ideas from the public as to what exactly the Commission could do to address a perceived lack of transparency. I therefore launched a public consultation, to which we received 315 submissions and more than 6 000 emails in total. I acknowledge that, by comparison with the Commission's consultation on the Investor to State Dispute Settlement (ISDS) issue, where it received 150 000 responses, 6 000 may not seem so significant. But I was genuinely encouraged by the fact that so many individuals and organisations took the time to set out their thoughts on this issue and to make



suggestions for improvement. The concern expressed in the overwhelming majority of these emails was that the EU needs to be more transparent as regards TTIP, notably in relation to its contacts with business representatives. While many of the emails contained similar content, one lady stressed their importance by saying: *"We cannot put it better ourselves but standard complaints do not make them any less heartfelt."*

I published the report on the public consultation on my website in January. I am sure you have all studied it in-depth but let me just highlight some of the recurrent themes:

Transparency

As regards transparency, many respondents called for more TTIP documents and information to be published online proactively. Such material should be made available at the earliest possible moment, regularly updated, easy to find and ideally in all EU official languages, they said.

A few respondents, on the other hand, argued that the transparency measures already adopted by the Commission are unprecedented and risk compromising the negotiations. Others recognised the need for certain documents to remain confidential, for example, in the area of tariffs or market access for services and public procurement.

A number of respondents supported the Ombudsman's call for a public register of TTIP documents, with links to publicly available documents. The following categories of negotiating documents were mentioned as being of particular interest: initial EU position papers, negotiating positions ahead of each negotiating round, consolidated texts, detailed agendas and reports of the negotiating rounds, as well as, of course, the final text of the agreement.

Public participation

Many respondents brought forward ideas to promote greater public participation, for example, in relation to the TTIP Advisory Group, the creation of which was broadly welcomed. On public consultations, respondents outlined when exactly they would like them to be held, the need to involve 'under-represented' groups, and the importance of ensuring that the results are fully reflected in the orientation the negotiations take.

On the issue of stakeholder involvement, respondents called for the early publication of meeting schedules, as well as dates for each negotiating round. While welcoming the new 'State of Play' document, people said they need a more detailed table setting out the position on each chapter and that it needs to be made available more swiftly than at present.

With regard to meetings and correspondence with the Commission in relation to TTIP, an overwhelming number of responses raised concerns about alleged corporate dominance of such meetings and contacts. To address this, respondents suggested that the Commission publish a list of all meetings held by the negotiators with stakeholders, as well as all written



communications related to the negotiations between the Commission and stakeholders. Some also argued that companies lobbying the EU institutions in relation to TTIP should be obliged to sign up to the Transparency Register.

D. Commission opinion

As already mentioned, on 25 November, the Commission published its TTIP transparency communication, which I publicly welcomed. Later that week, the Commission sent me its response to my own-initiative inquiry. It promised that it would:

- Publish and regularly update a list of TTIP documents shared with the Parliament and Council.
- Start asking organisations, which provide written papers to the Commissioner responsible for TTIP, if they agree to the publication of such documents.
- Publish information on all meetings held on relevant issues by Members of the Commission, cabinet members or Directors-General with organisations and self-employed individuals.

The Commission also declared that it is ready to examine whether these steps could be extended over time to other negotiations.

E. The Ombudsman's decision

Having analysed the responses to the public consultation, as well as the Commission's opinion, I set out my position in a decision that we published earlier this month, on 7 January 2015. Let me highlight the main findings:

Greater public access to negotiating documents

With regard to public access to negotiating documents, I made clear that the Ombudsman is not calling for absolute transparency. The Commission needs to create a context in which it can negotiate effectively with the US on TTIP, so as to deliver the best possible deal for the Union and its citizens. This may mean that the Commission can legitimately keep confidential certain information and documents, at least during certain stages of the negotiations.

However, exceptions to the general principle of disclosure must be properly explained and justified. The right of EU citizens to have public access to documents held by EU institutions is, after all, a fundamental right. This right deepens the democratic nature of the EU and its institutions.

Giving the public access to documents also often makes good practical sense! I have heard people involved in the TTIP negotiations lament that the debate has been marred by



misinformation and that people should decide based on the facts. Well, that seems a good idea. So, let's give the public the facts by giving them access to the documents that contain them.

The Commission has, from the outset, sought to do just this. It has, for the first time, made available certain categories of negotiating documents, including a range of initial EU negotiating positions. In its communication of 25 November, the Commission announced that it would make public all the EU negotiating texts that it shares with Member States and Parliament.

To give effect to this commitment of 25 November, Commissioner Malmström published the first set of documents on 7 January this year. I was heartened by the fact that all of the questions put by journalists in the press conference that followed related to the substance of the documents. This is as it should be and I would like to think that the Ombudsman, along with the other actors who have been calling for TTIP transparency, helped to bring this about.

Given what is at stake in these talks, what matters is the substance. The more transparent the negotiations are, the more the public will be able to provide meaningful input. The public must be able to follow the progress of these talks and contribute to shaping their outcome.

As the negotiations proceed, what will become increasingly important are the consolidated texts containing EU and US positions. Responses to the Ombudsman's public consultation made clear the importance that stakeholders attach to such documents. It is for this reason that the first suggestion I set out in my decision is for the Commission to inform the US of the importance of making common negotiating texts available to the EU public before the TTIP agreement is finalised. The Commission should also inform the US of the need to justify any request by them not to disclose a given document. It is not enough for the US to say, "We will be unhappy if you disclose that document". To consider otherwise would imply that the US would have an unfettered veto over the disclosure of *any* such document held by the Commission.

It is clear that early publication of common negotiating texts would allow for timely feedback to negotiators in relation to sections of the agreement that pose particular problems. Surely, it is preferable to learn of such problems sooner rather than later, so that they can be tackled effectively.

In the same vein, it has been said that critics of TTIP should wait until they have seen texts produced at an advanced stage of the negotiations before making up their minds. Fair enough, but the public should be in a position to shape that agreement and to contribute in a timely way. Citizens will not accept being confronted with what is practically a finalised version of an agreement that they can no longer help shape.

We must recognise, however, the special democratic responsibility of MEPs in scrutinising the negotiations on behalf of their constituents. The Commission and Council have hopefully learned from what happened two years ago with the Anti-counterfeiting Trade Agreement (ACTA).



More proactive disclosure of documents

My decision deals at length with the need for greater proactive disclosure of documents. To put this in simple terms, the relevant suggestions are aimed at making the Commission's life easier. There is, after all, significant public interest in documents generated as a result of the TTIP negotiations. Citizens are increasingly aware that TTIP will produce rules that impact on them in a manner analogous to how legislation impacts on them.

As part of its 25 November 2014 communication, the Commission announced that it would publish and update on a regular basis a list of TTIP documents that are shared with Parliament and Council. This will be done via its dedicated website on trade policy. I welcomed this announcement and strongly encourage the Commission to ensure that the list is comprehensive.

More balanced and transparent public participation

Transparency is not only important in terms of democratic accountability. It facilitates citizen participation by ensuring access to information. In the context of TTIP, the public can help shape the final agreement only if they are informed throughout the process and thus empowered to contribute to it in a timely way.

The Commission has actively sought to enhance public participation in relation to TTIP. The proactive transparency measures it has embraced, such as publishing initial position papers, are also conducive to encouraging effective participation.

My decision contains a number of suggestions to promote balanced and transparent public participation. By way of example, the Commission should extend its recently announced transparency obligations in relation to meetings with professional organisations or self-employed individuals, to the levels of Director, Head of Unit and negotiator. Also of importance is the content of what interest representatives discuss with the Commission and the documents they exchange with it. The Commission itself confirmed that applicants for access to TTIP documents expressed considerable interest in meeting reports and correspondence with industry. In response to the suggestion I made in this regard, the Commission announced that it is ready to ask business organisations, lobby groups or NGOs that submit papers to the Member of the Commission responsible for the TTIP negotiations, whether the paper (or a non-confidential version of it) can be published. I believe that the Commission should go further and confirm that all submissions will be published unless the sender gives good reasons for confidentiality and provides a non-confidential summary for publication. Moreover, the Commission should proactively publish meeting agendas and records of meetings it holds on TTIP with business organisations, lobby groups or NGOs.

I have asked the Commission to say, by 6 March 2015, how and when it will implement each measure that I have suggested.



F. Conclusion

When I launched the public consultation, I asked respondents to explain what they thought the impact of greater transparency would be for TTIP. That impact was deemed by respondents to be overwhelmingly positive, ranging from enhanced legitimacy, heightened trust, an educated debate, and a better agreement in substance.

I am aware of arguments that, given the complexity of the issues involved in TTIP, greater transparency could lead to confusion and misunderstandings among citizens. Such arguments are, in my view, profoundly misguided. The only effective way to avoid public confusion and misunderstanding is more transparency and a greater effort proactively to inform public debate.

More broadly, if the public is reassured, in relation to TTIP, that it has been (i) informed of the facts; (ii) empowered to understand what is at stake; and (iii) allowed to communicate its concerns, questions and suggestions and received a reasoned response, the Union's democratic credentials and legitimacy will be enhanced and trust in its institutions will be strengthened.

I was convinced of this when I read some of the emails that were sent to us when we informed the 6,000 respondents of the Ombudsman's decision. Let me read you just one of the comments:

"Many thanks for forwarding me this report. Should the recommendations it contains be carried through, it would represent a great leap (forward) in terms of accountability and transparency (...). That the investigation was undertaken in the first place, is of itself, most reassuring."

I look forward now to your questions, insights and feedback and to an informed discussion.