



**Council of the European Union**  
General Secretariat  
*The Secretary-General*

SGS14/12023



**Médiateur européen**

**- 2 OCT. 2014**

**Date d'arrivée**

Ms Emily O'Reilly  
European Ombudsman  
1, av. du Président Robert Schuman  
CS 30403  
F-67001 Strasbourg Cedex  
France

**30 SEP. 2014**

Brussels,

**Subject: Your letter of 27 July 2014 relating to your own-initiative inquiry OI/11/2014/MMN concerning transparency and public participation in relation to the Transatlantic Trade and Investment Partnership ('TTIP') negotiations**

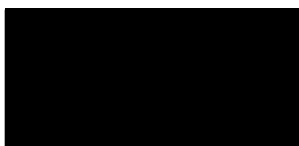
Dear Ms O'Reilly,

Thank you for your letter of 27 July 2014 relating to your own-initiative inquiry OI/11/2014/MMN concerning transparency and public participation in relation to the Transatlantic Trade and Investment Partnership ('TTIP') negotiations.

In your letter, you refer to the basis on which the European Commission has been asked, on behalf of the Union, to negotiate on the TTIP agreement, namely the EU negotiating directives, and note that they have not been published proactively by the Council. Based on the reflections in your letter on this matter, you invite the Council to consider proactively publishing the document setting out the negotiating directives.

I am pleased to provide you the opinion of the Council in the Annex to this letter.

Yours sincerely,



Uwe Corsepius

1. Your own-initiative inquiry OI/11/2014/MMN concerns transparency and public participation in relation to the Transatlantic Trade and Investment Partnership ('TTIP') negotiations. In your letter, you refer to the basis on which the European Commission has been asked, on behalf of the Union, to negotiate on the TTIP agreement, namely the EU negotiating directives, and note that it has not been published by the Council.
2. In your letter, you express your opinion that a high level of transparency of the aims and objectives of the European Union in the TTIP negotiations constitutes a precondition for a successful outcome of the negotiations. You make a number of assumptions on the consequences that the disclosure of the TTIP negotiating directive would have on the ongoing negotiations and you conclude that it is not immediately apparent how disclosure would undermine the protection of any public or private interest provided for in Article 4 of Regulation 1049/2001.
3. The Council notes that, as you have underlined in your letter, no complaint has been so far submitted to you concerning any alleged maladministration relating to the handling of requests for public access to the TTIP negotiating directives by the Council, nor have you identified in your letter any Council's conduct that could amount to such an instance of maladministration.
4. In that regard, the Council would like to stress that Regulation 1049/2001 provides for a number of obligations concerning the way EU Institutions have to deal with requests for public access. However, there is no obligation in the Regulation requiring the institutions to make public non-legislative documents such as negotiation directives, in a preventive way. In particular, according to the Council, such an obligation cannot be inferred from Article 12 of the Regulation, which clearly limits the scope of direct access to non-legislative documents. Moreover, the Council has complied with Article 12 by entering in its public registry the reference of the document at issue.
5. The Council is therefore unable to identify in your letter any alleged instance of maladministration which may be reproached to it and which may justify your enquiry in line with Article 228 of the TFEU and Article 3 of the Statute of the European Ombudsman.

6. I wish to reassure you that the Council remains fully committed to consider any request for public access to the negotiating directives which may be submitted in line with Regulation 1049/2001 and the relevant case law.
  
7. More generally, the Council would like to stress that it fully recognises the importance of a high level of transparency of the aims and objectives of the European Union in the TTIP negotiations. Member States agree on the paramount importance of communication and outreach activities to optimise the provision of information to the general public. They have in particular welcomed the active efforts undertaken by the Commission in this respect, notably through its regular reports on the progress of the negotiations and the detailed information provided through its dedicated website. They have also underlined the usefulness of exchanging experiences on communication activities under way at national level.
  
8. In this regard and in the spirit of a proactive approach to transparency, the current presidency has recently taken the initiative to enter into consultations with the Member States on whether the TTIP negotiating directives could be disclosed to the public. These consultations are currently on-going.

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