

## JASMONTAITE Inga

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**From:** Pascal KERNEIS EUROPEAN SERVICES FORUM [REDACTED]  
**Sent:** 29 October 2014 11:14  
**To:** Consultation-OI-10-2014  
**Subject:** [EOWEB] Public consultation in relation to the transparency of the Transatlantic Trade and Investment Partnership (TTIP) negotiations  
**Attachments:** ESF Reply to EU Ombudsman Consultation on Transparency in TTIP - Final.doc  
**Categories:** To be registered according to Rosita; submitted to AR on 29.10.2014

### Sender

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**Sender** Pascal KERNEIS EUROPEAN SERVICES FORUM [REDACTED]  
**To** Public consultation OI/10/2014  
**Date** Wednesday, October 29, 2014 11:14:05 AM CET

### Your data

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#### Part 1 - Contact information

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<b>Language you would like to receive an answer in</b>	en - English
<b>Other language you would accept an answer in (if applicable)</b>	fr - français

#### Part 2 - Data

**To** Public consultation OI/10/2014

**Subject** Public consultation in relation to the transparency of the Transatlantic Trade and Investment Partnership (TTIP) negotiations  
Please find attached the contribution of the Euroepan Services Forum to the public consultation launched by

**Content** the Euroepan Ombudsman in relation to the transparency of the Transatlantic Trade and Investment Partnership (TTIP) negotiations.

## ESF reply to public consultation

European Ombudsman launches public consultation in relation to the transparency of the Transatlantic Trade and Investment Partnership (TTIP) negotiations

From :

<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/56100/html.bookmark>

### **“Background**

*On 29 July 2014, the European Ombudsman opened an own-initiative inquiry towards the European Commission concerning transparency and public participation in relation to the TTIP negotiations (OI/10/2014/RA). The present public consultation concerns that inquiry<sup>[1]</sup>. The outcome of the TTIP negotiations could have a significant impact on the lives of citizens. The aim of the Ombudsman's inquiry is to help ensure that the public can follow the progress of these talks and contribute to shaping their outcome.*

### **Questions and proposals to the Commission**

*In line with suggestions made by the European Parliament, the Commission has made real efforts to enhance the transparency of the TTIP negotiating process and to promote public participation. Notwithstanding these efforts, some individuals and organisations have expressed dissatisfaction. Against this background, the Ombudsman asked the Commission to provide, by 31 October 2014, its views on certain questions and proposals that can be found in the [letter](#) opening this inquiry.*

### **Invitation to submit contributions**

*This consultation gives everyone the opportunity to make known their views on the issues raised by the own-initiative inquiry. The Ombudsman will consider the contributions received before presenting a set of further suggestions that the Commission should take into account as the negotiations proceed. As the target end date for the Ombudsman's inquiry is 31 December 2014, the Ombudsman invites you to respond to the following questions by **31 October 2014**.”*

*Question 1. Please give us your views on what concrete measures the Commission could take to make the TTIP negotiations more transparent. Where, specifically, do you see room for improvement? (We would ask you to be as concrete as possible in your replies and also to consider the feasibility of your suggestions, in light of the timeframe of the negotiations. It would be most helpful if you could prioritise your suggestions.)*

The European Services Forum (ESF)<sup>1</sup> would like first to draw the attention on the various measures that the European Commission has already taken to make the TTIP negotiations more transparent. The Directorate General for Trade has notably:

- Organised a long lists of specific meetings on TTIP
  - in the framework of the long standing Civil Society Dialogue, and for the first time,
  - in the framework of ongoing trade negotiations, specific meetings for the stakeholders during the rounds of talks, suspending the technical negotiations and allowing all interested parties to express their views and to receive a briefing from the two Chief

<sup>1</sup> *The European Services Forum (ESF) is a private sector trade association that represents the interests of the European services industry in International Trade Negotiations in Services & Investment. It comprises major European service companies and European service sector federations covering service sectors such as financial services, telecommunications, maritime transport, business and professional services, distribution, postal and express delivery, IT services, construction services, etc.*

Negotiators. This is an unprecedented exercise, showing the commitment of the negotiators towards more transparency.

- Published a long list of specific and detailed documents related to the TTIP,
  - some of them introducing the purpose of the negotiations and explaining what they are about and what they are not about,
  - Others going into much more details, providing information for experts and stakeholders that are willing to understand the real substance of the discussions.

These documents and others that will be published during the course of the negotiations could be posted on a public register of TTIP documents, in line with Article 11 of Regulation 1049/2001. But it won't probably change much compare to the already existing dedicated TTIP web site linked to DG Trade home page. More documents on substance with well explained content of the background of the proposals will be welcomed. What is needed is not transparency for the sake of transparency, but transparency to provide more information that can feed a proper informed debate. Transparency is not an end in itself, but a tool for helping stakeholders and citizen to build up their mind.

ESF considers that the European Commission is already doing a lot in terms of transparency in the TTIP negotiations. The European Parliament INTA Committee is also committed towards much transparency and held already many hearings and events on these negotiations. ESF welcomes the recent decision by the Council of the EU to make the negotiating mandate for the Transatlantic Trade and Investment Partnerships (TTIP) publicly available. But the Council activities on TTIP are much less transparent than those of the Commission and should be encouraged to improve its current practice in that respect.

However, even though significant progress has been made, there is still room to improve transparency. Our suggestions maybe found here below, listed by order of priority.

#### Measures to take:

1. ESF would like to suggest that there is a need for unambiguous rules for the classification of documents that are related to international trade negotiations. To our understanding, the current Regulation 1049/2001 on public access to documents is not always relevant to this specific policy domain. There is an undeniable need of some confidentiality in trade negotiations. There is an imperative need to protect the strategic interests of the European Union in the sensitive parts of the talks, so as not to divulge the information to the other negotiating partner, so as not to put any of the negotiating parties' position at risk. But, on the other hand, there are also many other TTIP related documents that are of **non-confidential** nature. These should be made available to a larger public.
2. Although we understand that this is not of the mission of the EU Ombudsman, ESF is of the view that transparency in the trade negotiations should come from both sides. We hope therefore that the US should provide meaningful non-confidential summaries of their negotiating positions also. This element, together with proper information and association of the European Parliament in the negotiations, is essential for securing sufficient political support to the negotiated trade agreement.
3. The European Services Forum Director is part of the TTIP Advisory Group that the Commission has put in place, in part to respond to the request of more transparency from the interested parties, and in part to hear views from them in a formal context. ESF welcomes that initiative. It provides ESF stakeholders a channel to be informed and to provide the Commission with specific expertise. TTIP Advisory Group members, under the specific terms enacted in its constitution, have access to some confidential documents. This is again an unprecedented step that the Commission must be commended for. Similar access to confidential documents is granted to any interested MEPs and selected representatives of member states. We believe that, should the Commission envisage at some point to increase the access rights to this reading room, it should be linked to specific sanctions in case of breaches of confidentiality, including for those in charge of the decision making process in the end, i.e. the Member States experts and the MEPs. This is the case for the members of US advisory groups.

4. We urge the Commission to come to the digital age and find an appropriate means to set up a “digital reading room” that would allow relevant stakeholders to get access to confidential sector-specific documents through accredited password system. Such a system would also allow tracking the eventual leaks of confidential documents.

Question 2. Please provide examples of best practice that you have encountered in this area (for example, in particular Commission Directorates-General or other international organisations) that you believe could be applied throughout the Commission.

In its field of activity, ESF is essentially dealing with DG Trade, but has also some experience with DG Markt. DG Trade has a rather good record in terms of transparency. It established since 1999 a Civil Society Dialogue that involves regular, structured meetings to discuss trade policy issues. The European Commissioner for Trade or DG Trade officials attend the meetings and inform participants of the ongoing developments in EU trade policy, and listen to and exchange views with them. DG Trade encourages broad representation in order to hear diverse opinions and encourages civil society to participate actively in the meetings. The minutes of the meetings are published on its website, together with related documents to the agenda.

In addition, DG Trade set up a Contact group that acts as facilitators and sounding boards for DG Trade. The Contact group is composed of all segments of the civil society, including the three sections of the Economic and Social Committee. The Contact group contributes to transparency in both directions and help to circulate information to a wider group of constituencies. ESF is part of that Contact Group and fully contributes to the dissemination of the information to all its stakeholders. The group also proposes topics for discussion and advises on organisational matters. You can find here the [Terms of reference for the contact group](#) and the [List of contact group addresses](#).

Trade is an issue that covers nearly all segment of the economy and therefore generates misunderstandings and fears. Therefore transparency is a good and necessary tool to inform the citizens. As a result, all stakeholders who ask for more transparency must really take advantage of the tools and the meetings put at their disposals, which is not always the case. This is particularly true for the substance related to the TTIP negotiations. We urge the Ombudsman to take these aspects into consideration as well.

Question 3. Please explain how, in your view, greater transparency might affect the outcome of the negotiations.

ESF believes that transparency in trade negotiations must be handled carefully. Greater transparency might affect the outcome of negotiations both ways, i.e. positively but also negatively.

We hope that more transparency is about explaining what the negotiations are about, what are the potential benefits, as well as what are the possible risks and how to prevent them. Such transparency should consolidate greater public support, dispel myths and misperceptions of the TTIP agreement and make it more accessible and relatable to the people. Much of the Commission action on the TTIP dedicated web site has already started to undertake that task. It should be continued and improved where possible.

On the other hand, as in any negotiation, the details of the strategic negotiating position in the various fields covered by the talks (margin of manoeuvre in the reduction of tariffs, tactical move in the services and public procurement market access negotiations, etc.) must be kept confidential in order to ensure meaningful results. We support the fact that, throughout the negotiations, the actual strategic interests of the European Union have to remain protected and confidentiality should be used to this aim only.

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We remain at the disposal of the Ombudsman for any further information on this issue.