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To Public consultation OI/10/2014
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Language you would like to receive an answer in en - English

Part 2 - Data

To Public consultation OI/10/2014
Subject Submission on TTIP to the Office of the European Ombudsman

In respect of the public consultation on TTIP, attached please find a brief submission from the Ireland Region of Unite the Union.

Kind regards

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Submission to the Office of the European Ombudsman

Subject: TTIP

30 October 2014

Unite the Union
Ireland Region

Unite would like to thank the Office of the European Ombudsman for affording us this opportunity to make this submission regarding transparency issues concerning the negotiations over the Transatlantic Trade and Investment Partnership. This is unlike traditional trade agreements as the overwhelming majority of issues relate to regulatory convergence which has the potential to affect a wide number of economic, social and environmental spheres. While we welcome the EU President's commitment to increasing the transparency of the negotiation, Unite believes that the issues are so fundamental, wide-ranging and, in all likelihood, irreversible, that the fullest step-by-step consultation, information and participation by all relevant stakeholders is absolutely necessary.

This is all the more the case as the ratification process by the European Parliament is conducted on a 'take-it or leave-it' basis. Within these parameters, seemingly minor issues can be subsumed by the principle of the treaty itself; however, given the subject-matter, what may seem minor today – or at the time of debate and decision in the Parliament - can evolve into unintended and even perverse consequences. Therefore, usual practice in regards to communication, consultation and participation in treaty negotiations is no longer good enough.

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?

The principle behind our response is 'let the public in'.

(1) Communication, consultation and participation

(a) Publishing on an ongoing basis the draft negotiating documents and text editions (in the form of amendments and text commentary).

(b) Publishing all legal opinions (e.g. the EU Parliament's legal service opinions, etc.) pertaining to the interpretation or explanation of the draft negotiating text or amendments)

(c) Consulting at each stage in the negotiating with recognised stakeholders, EU parliamentary groupings and, where it is requested from national parliaments, national representatives. This should mirror the special position that US advisors have to documentation



(d) Require representatives of the negotiating team to appear before the appropriate EU parliamentary committee – to provide information, answer questions, etc.

We are concerned that there is no formal public consultation process (a common process accompanying the introduction of various Commission programmes). This should be addressed immediately.

(e) The Commission should launch a fully-funded and structured public consultation process that provides the public in all member states with full access to all relevant materials. There should be special emphasis on including ‘under-represented’ groups, to provide a proper balance between civil society organisations and special lobbyists.

(f) This structured public consultation process should identify potential adverse impacts – or an ‘impact assessment’ process – a scoping exercise on issues of potential public concern. We would be concerned that any public consultation process should not descend into a ‘box-ticking’ exercise, or gloss over issues that may arise only after the ratification process.

These are the absolute minimum in terms of communication, consultation and participation. However, more innovative means can be explored:

(g) webcasting the negotiating process and publishing it on-line and providing access by accredited representatives to rooms where negotiations are being conducted on an ex-officio basis (i.e. without speaking or intervention rights).

(h) The appointment of a dedicated unit for transparency which can directly communicate requests from stakeholders to, and receive the appropriate and relevant responses from, the negotiators. A specialist unit to achieve this task can help focus the process of transparency.

All avenues to opening up the process should be explored – especially as the International Covenant on Civil and Political Rights, which all EU states have ratified, affirms the right of the public to take part in the conduct of public affairs.

(2) Transparency

Transparency Register

Corporate interests have engaged in unprecedented lobbying to advance their interests in the TTIP talks. Research published by the Corporate Europe Observatory last year¹ showed that the Commission had at 130 ‘meetings with stakeholders’ on the EU-US free trade talks, at least 119 – or 93 per cent – of which were meetings were with large corporations and their lobby groups.

It is clear that – if only because of resources – corporate lobby groups enjoy a disproportionate level of access to decision-makers, in contrast with many of the interests who may be directly and

¹ [Corporate Europe Observatory report](#) , 04 September 2013, accessed 24 October 2014

negatively impacted by the outcome of the TTIP negotiations (ranging from trade unions to environmental and consumer groups).

While the EU maintains a Transparency Register for lobbyists, registration is voluntary and – even if an organisation does register – the disclosure required in respect of lobbying activities is limited, with the result that EU citizens cannot identify who is lobbying whom, and to what specific topics the lobbying relates. To compound the problem, registration is retrospective rather than concurrent, so – for example – a company may have started lobbying on TTIP at the start of 2014 but, even if they decide to register, that information will not be publicly available until some time in 2015.

The Ireland Region of Unite has voluntarily submitted its details to the EU Transparency Register, and strongly supports moves to make the Register mandatory.

(3) ECJ ruling

The July European Court of Justice ruling that documents related to international activity are not automatically exempt from EU transparency requirements is welcome since it requires the Council to give specific reasons why it would refuse such access². However, access can still be refused to the negotiating mandate for trade talks, and to any legal advice pertaining to that mandate.

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

There is a considerable literature referring to both the functional and rights-based benefits of greater transparency in public affairs. Referring to the former, the participation of a larger grouping in the monitoring and assessment of particular activities (in this respect, the step-by-step process in negotiating the treaty) can provide:

- Assistance in identifying technical defects, ambiguities, and potential perverse consequences in the drafting process
- Policy guidance – in particular, to identify where specific provisions will not have support among key stakeholders that would only emerge in the ratification process
- Insights into missed or unappreciated opportunities, where social and economic interests are not being advanced in the absence of wider participation

There are a number of civil society groups which have critiqued the issue of popular rights in public affairs. We don't intend to canvas all these. However, Unite would like to point out one key issue that has emerged generally among a number of member-states and social constituencies throughout the union. This refers to a widespread sense of alienation from policy formulation at the EU

² [Euractiv website](#) 4 July 2014, accessed 24 October 2014

institutional level. This alienation is accompanied by a corrosive cynicism which is fuelled by formal commitments to 'inclusiveness' and 'participation' but which in reality are merely instrumental. This has found expression, for example, vis-à-vis the fiscal mandates imposed on national democratic institutions. This has created an environment of powerlessness among wide section of the European population, coupled with identifiable hardship.

These factors have led to a fracturing of the European identity and have the potential to undermine the European project. This can be seen in the rise of extremist, far-right groups which have exploited this alienation and hardship to further a project that undermines confidence in European democracy.

Participation, transparency and accountability should be seen as tools to facilitate the creation – and a reality-grounded perception – of a broad-based social consensus around a European democratic polity. We ignore this at our peril.

ENDS