

## European Ombudsman Public Consultation - Making TTIP More Transparent

Deadline: 31 October 2014

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

### 1. What measures could the Commission take to make TTIP negotiations more transparent? What room do you see for improvement?

The lack of transparency and space for participation in the TTIP negotiations has been a concern for civil society since the beginning of the talks, and the Ombudsman's consultation on the issue is very welcome.

Access Info Europe has specific concerns about the quality and quantity of information that is published proactively by the Commission and other EU institutions, as well as the reluctance to make information available following requests for access to EU documents (via Regulation 1049/2001).

There are two clear actions the Commission should take in order to increase transparency of the TTIP negotiations:

#### » **Disclosing documents following access to documents requests**

There have been a number of complaints made by civil society about the use of exceptions to block access to information and documents that are essential for following the negotiations, promoting public debate on the issue, and holding decision-makers accountable.

A number of requests made through the online request platform AsktheEU.org have resulted in refusals to disclose documents on the basis of exceptions contained in Regulation 1049/2001, notably the protection in Article 4.1 of international relations.

It is unacceptable that documents which have been shared with others outside the negotiation process such as businesses, are being denied to members of the public, including civil society organisations. This creates an uneven playing field, permitting only some actors to make suggestions to the EU negotiating team and hence to influence their position in the talks with the United States.

In order for civil society to participate more closely and in a more informed manner in this process, it is imperative that the European Union increases both the documentation available and hence the opportunities for participation.

» **Proactively publishing documents and information**

Increasing the amount of information published proactively and ensuring that it is regularly updated is a key measure to make the Transatlantic Trade and Investment Partnership negotiations more transparent. This simple solution would ensure that information is released not only to a select few, but rather that is available and downloadable online as close to real-time as possible, and is easy to find for civil society and citizens, and businesses.

Proactive publication would ensure that citizens are able to find out the negotiating positions and act accordingly when they believe that an issue should be highlighted or challenged. The TTIP, potentially the biggest trade deal in history, will also have a significant impact on the everyday lives of those within living and working in the European Union and beyond. The EU institutions are negotiating on behalf of the citizens and governments of 28 Member States, which is why its negotiating positions should be made public. Having the complete documentation available would also permit the EU to engage in and stimulate a balanced public debate on topics which are clearly of public interest.

Given the commitment to openness guaranteed by the European Union treaties, it is imperative that the European Commission makes available for the public at the earliest possible and at regular intervals the following kinds of documents:

- » Information about the deliberations between the Council Member States in preparation of the negotiating mandate and other texts
- » The initial position papers tabled by the EU;
- » Any further papers submitted by the EU in the course of the negotiations that detail or explain the position of the EU on the topic, and that are being used in the course of the negotiations with the other party;
- » The draft versions and final versions of individual chapters as well as the whole agreement at all steps of preparation and evolution.
- » All written communications between the European Commission and other European institutions (European Parliament and Member States) on this issue;
- » All agendas and minutes of meetings between the European Commission and the European Parliament and Member States on this issue;
- » All agendas and minutes of meetings between the European Commission and third parties – including industry and lobby organisations – on this issue.

Finally, the European Union should do more to ensure a balanced participation in and influence of interests on the negotiations. By disclosing and proactively publishing more information and documentation to citizens and civil society groups, the EU could more effectively open participatory mechanisms and foster healthy public debate on the negotiating mandate as well as on the actual content of the negotiations.

## **2. Best examples in practice you have encountered in this area that you believe should be applied to the Commission.**

### **2.1 Transparency in International Treaty Negotiations**

A recent example of relatively high levels of transparency in international treaty negotiation is that of the 2013 Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired, or Otherwise Print Disabled.

During the process of negotiating this treaty, the World Intellectual Property Organisation (WIPO), disseminated documents early in the process, and in multiple languages. Copies of documents released are available on line.

[http://www.wipo.int/meetings/en/details.jsp?meeting\\_id=28722](http://www.wipo.int/meetings/en/details.jsp?meeting_id=28722)

It is reported that the talks took place with an unusual degree of openness and inclusion. There were ongoing releases of draft negotiating documents and stakeholders could watch the negotiations either in person or remotely via audio feeds and webcasts.

<http://www.freedominfo.org/2014/01/wipo-transparency-wins-praise-gaps-remain/>

WIPO also has what is regarded as a positive policy on accrediting stakeholder organizations and interest groups as observers at formal meetings and in consultation processes, sometimes underwriting their expenses. According to its website [LINK](#) there are currently some 350 organizations accredited as observers at WIPO meetings. Applications by international and national NGOs must include basic information about the organisation and some justification of its interest in and/or relevance to the process. Although observers are not officially permitted to speak in formal meetings, they sometimes do, and the accreditation gives them access and facilitates informal meetings.

### **2.2 Good Practice in Transparency of Documents Needed for Participation and Accountability**

At the national level across Europe there are multiple examples of good practices in transparency of the documents being used in decision making, which permits members of the public to participate in the processes, whether via formal consultations or in public debates, and to hold decision makers to account for the decisions taken.

We give here two examples of good practices, one from the UK with respect to an ongoing public consultation and from Croatia with respect to the legislative process.

Access Info Europe believes that there should be proactive consultations with the European public on some of the key elements of the TTIP negotiations in order to ensure that stakeholders at the national level have a chance to have their perspectives and needs taken fully into account.

Releasing as much information about the TTIP as possible into the public domain would help to increase the quality of the input of those wishing to take part, and in turn would serve to provide the Commission with valuable information which it should be gathering before entering negotiating rounds with third parties.

#### United Kingdom: Public Consultation and Access to Key Documents

The UK's Environmental Agency regularly opens up public consultations, for example on applications made by private companies to obtain environmental permits for managing extractive mining waste. In these cases, the Agency asks citizens and civil society for their opinions, concerns, or knowledge of key environmental factors that the Agency might not have already be aware of.

To conduct these consultations, a list of key documents is made available to the public in order to guarantee solidly informed opinions. Documents facilitated included: information on the company; health and safety documents identifying potential risks and how these should be managed and controlled; information on the project's team and equipment; information on the site; detailed information on the procedure (the site construction, the drilling, the well test...); information on control measures (noise, traffic management, auditing, complaints...) and technical standards; and the conclusions of environmental impact studies.

This consultation sets a good example in two ways: Firstly, because of the Agency's belief that the public can make valuable suggestions, which should be taken into account in order to achieve better decision-making to the benefit of citizens. Secondly, the amount of detailed information provided to citizens is exemplary, as it permitted not only greater openness, but better-informed access to the decision-making process.

More information on the Environment Agency's consultations can be found [here](#).

#### Croatia: Consultation and Cooperation between public bodies and civil society

As part of their Open Government Partnership (OGP) commitments, the government of Croatia has created and implemented a 'Code of Practice on Consultation with the Interested Public in the Procedures of Adopting Laws', which came into force in 2009. We present this as an example of good practice in terms of transparency and public participation in the decision-making process.

The Croatian government drafted and carried out the implementation of this Code of Conduct working together with civil society groups and citizens. Since its completion, the country's Office for Cooperation with NGOs holds regular meetings with public servants involved at various stages of conducting consultations, making a contribution to the

effective monitoring of the Code of Conduct.

All information on Croatia's initiative to carry out more inclusive and meaningful public consultations on laws can be found [here](#).

The previously mentioned Office for Cooperation with NGOs deserves also a mention of its own. By monitoring and improving the cooperation between the NGO sector and all kinds of governmental and administrative institutions and bodies, both at a national and local level, this Office has become an example of how governments and public bodies can cooperate and work together with civil society through open, collaborative and participative dialogues, enriching the decision-making process and heightening democratic standards.

All information about the Croatian Office for Cooperation with NGOs can be found [here](#).

### **3. How greater transparency might affect the outcome of negotiations?**

In the short and medium-term, increasing transparency standards would have a positive effect on the way EU citizens and civil society perceive the TTIP outcome; it is the ideal way to ensure balanced interests are being represented and heard in the course of the negotiations, and this is essential in order to gain and strengthen public trust as it gives citizens the certainty they will get the best possible deal in the final agreement.

In the same vein, opening up the decision-making process by proactively publishing key documents would allow citizens to monitor the effective safeguard of the negotiating directives, as well as permitting adequate impact assessments of the outcome. It is through this kind of high-level participation and public debate that the negotiations will gain greater legitimacy, making them much more sustainable in the future.

The TTIP will establish parameters of the future legal framework in a number of areas including food quality, consumer protection, and chemicals safety. It is thus akin to the early stages of a legislative process, and hence there is a particular need for transparency and accountability. As Advocate General Cruz Villalón notes in the Opinion in the Case of Council of the EU v Access Info Europe (Case C-280/11 P) before the European Court of Justice, "access to information "serves in a direct way to satisfy the ultimate purpose of the legislative procedure, namely to give democratic legitimacy to the legislation that emerges from that procedure." See [Paragraph 61 here](#).

The Advocate General added that " 'Legislating' is, by definition, a law-making activity that in a democratic society can only occur through the use of a procedure that is public in nature and, in that sense, 'transparent'. Otherwise, it would not be possible to ascribe to 'law' the virtue of being the expression of the will of those that must obey it, which is the very foundation of its legitimacy as an indisputable edict. In a representative democracy, and this term must apply to the EU, it must be possible for citizens to find out about the legislative procedure, since if this were not so, citizens would be unable to hold their representatives politically accountable, as they must be by virtue of their

electoral mandate.” See [Paragraph 63 here](#).

Furthermore, making important information such as this public is also likely to reduce the reliance of journalists, civil society organisations, and small businesses on leaked documents, and would create a level playing field for all to participate. Currently the situation is that only those with close contacts to EU or Member State officials are able to access key information.

Finally, it is noteworthy that greater transparency in trade negotiations such as TTIP is not necessarily about changing the outcomes, but about redefining the process by which important decisions are being taken in EU institutions. In this respect, by inviting the public to take part in these negotiations, the EU Commission would become a more open and democratic body, thus fulfilling its obligations under the Treaties to act as openly as possible.