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TRANSATLANTIC TRADE & INVESTMENT PARTNERSHIP - TTIP

BRIEF OVERVIEW, LATEST DEVELOPMENTS & HOW TO TAKE ACTION

by

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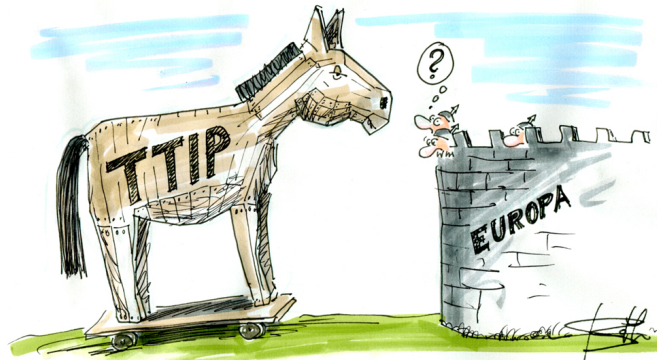
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Document to the attention of the Executive Committee (EXCO) of the European Anti-Poverty Network (EAPN).
This paper is based on the presentation done at the EXCO meeting in Sevilla, November 2014, and includes additional information and news published after this date and more recent developments.

February 2015

INTRODUCTION - THE TROJAN HORSE

The present article attempts to give a general insight into the Transatlantic Trade & Investment Partnership (TTIP) that is currently negotiated between the European Union (EU) and the United States of America (USA). TTIP is presented by major EU and US rulers as an indispensable instrument permitting growth for the involved States and, accordingly, more wealth and jobs to the citizens of the USA and the EU. We want to dismantle this discourse and attest the real threats TTIP represents for citizens (in both the USA and the EU), for democracy and for the environment. TTIP is not about offering benefits to the States and their citizens, it is a poisoned chalice at many regards, a Trojan Horse hiding numerous dangers.



The first chapter - «TTIP at a glance» - gives some very **brief points of references** with regard to TTIP.

In the second chapter, we will show that it is actually **big corporations that lobby most** the European Commission with regard to TTIP and that they keep a tight rein on these negotiations. Furthermore, instead of swearing allegiance to public interest and fundamental rights, many top EU politicians swear allegiance to these corporations and their underlying objectives.

«The main objective of the TTIP or TAFTA is to harmonize to the greatest extent possible transatlantic rules, regulations and standards on food and consumer product safety, environmental protection, biotechnology and toxic chemicals management, financial services and banking, domestic regulation of services, pharmaceutical patent terms, and many more areas of public policy.»

Although TTIP will affect many areas that will be seriously endangered, such as **environmental issues, consumers rights, data protection** and so forth, we will - within the limits of this short paper - only tackle very briefly the issue of **employment policy and the supposed creation of jobs** as these are of more direct relevance for EAPN's work (chapter 3).

In the fourth chapter, we will zoom in on the undoubtedly biggest threat if TTIP comes into force, i.e. the proposal to include **investor-state dispute settlement (ISDS)** in the TTIP-deal.

As a **conclusion**, we want to consider possible actions aiming at safeguarding the general social acquis and other acquired standards and propose in what way EAPN can be active on this topic.

1. TTIP AT A GLANCE

What is TTIP?

TTIP stands for Transatlantic Trade and Investment Partnership. It is also regularly referred to as Transatlantic Free Trade Agreement (TAFTA). The TTIP aims at a unregulated liberalized « free trade zone » between the USA and the EU.

What is free trade?

Free trade is the short description for an international free movement of goods and services that is not submitted to custom barriers or other restrictions to trade. In the context of free trade and through its international exchange processes, prosperity and living standards shall allegedly be sustainably improved in the national economies.¹

What is TTIP all about?

Since the beginning of the 1990s, there have been repeatedly discussions between the EU and the USA in order to create a free trade zone. TTIP will not only lower - and even try to remove - custom barriers between the partners. TTIP also aims at a « harmonization » of trade barriers. These include tariff barriers (such as customs) as well as non-tariff barriers (such as quality standards, packing instructions, labeling regulations, origin specifications, technical or legal requirements on imported products, etc.). So far, due to the different standards, companies have to produce their products in different variants for the European and the US market.

So, these negotiations cover three major areas:

1. access to the market for goods, services, investment and public procurement;
2. regulatory convergence and non-tariff barriers;

3. development of globally oriented rules: competition, work, environment.²

When is being negotiated?³

1. From 7th to 12th July 2013, the first round of negotiations of the EU-USA Trade and Investment Agreement took place in Washington DC.
2. The second negotiation round, initially planned on 7th October 2013, failed due to the US-American Government shutdown and hence, finally took place from 11th to 15th November 2013 in Brussels.
3. The third round met from 16th to 21st December 2013 in Washington DC.
4. The fourth round of negotiations took place from 10th to 14th March 2014 in Brussels.
5. It's in Arlington, USA, that the partners met for the fifth round from 19th to 23rd May 2014.
6. From 13th to 18th July 2014, the sixth negotiation round took place in Brussels.
7. The 7th round took place in Chevy Chase, USA, from 29th September until 3rd October 2014.
8. The 8th and so far last round took place in Brussels, from 2nd to 6th February 2015.⁴

Who is involved in TTIP-negotiations?

In EU Member States, trade policy is a policy area that has been brought into EU Community framework. Hence, it is the EU Commission under the responsibility of its Commissioner for Trade⁵ that leads the negotiations for the EU with the help of Chief Negotiator Ignacio Garcia-Bercero (DG Trade). On US-side, it is the United States Trade Representative Michael From who is leading the negotiations with the

¹ Definition given by the German Federal Agency for Civic Education (*Bundeszentrale für politische Bildung*).

² See MERCADIÉ, Michel, *PTCI / TTIP: La fin de l'Europe?*, August 2013. Document kindly provided by EAPN France.

³ Cf. See website concerning [TTIP on DG Trade](#). Remark: All underlined texts contain hyperlinks to webpages. All web-links have last been checked on 13th February 2015.

⁴ Note that within the scope of this last round in February 2015, the DG Trade of the European Commission organized two « stakeholders engagement events » on Wednesday, 4th February. More information on [DG Trade's website](#), as for instance the [programme](#) and the list of [registered organisations](#) (both of which show a predominant presence of business representatives).

⁵ From 2009 to 2014, under the Barroso-Commission, it was Belgian EU-Commissioner Karel De Gucht. In the new Juncker-Commission that started in autumn 2014, it is Swedish EU-Commissioner Cecilia Malmström.

support of Mullaney (Assistant United States Trade Representative for Europe and the Middle East). A list with « stakeholders » meetings⁶ clearly shows that 93% of all meetings between the European Commission and stakeholders took place with big corporations and their lobby groups. Hardly any meetings with civil society, trade union or public interest representatives have taken place.

Who confirms this Agreement?

The European Council granted the negotiation mandate to the European Commission. The EU Parliament needed - and gave - its agreement as well.⁷ After each negotiation round, the EU Commission informs the European Council and the European Parliament about the results. Once the final agreement text is decided, all national parliaments need to approve it as well.⁸

⁶ After further questioning, the NGO Corporate Europe Observatory (CEO) received this list from DG Trade via the website asktheeu.org. Note that EU law requires a response within 15 working days when a request is officially formulated via the « freedom of information request ». It took the European Commission 14 months to answer to CEO's request of getting their contact list with industry groups with regard to the preparations for the EU-US trade talks. Furthermore, the Århus Convention - the [UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters](#) - obliges the European Commission to furnish information to the public and associations as far as environmental topics of the TTIP are concerned. In this context, the Commission currently faces a maladministration investigation over TTIP secrecy after refusing environmental NGOs access to TTIP-related documents.

⁷ See here [the European Parliament motion for a resolution on TTIP](#) giving the negotiation mandate to the European Commission. Besides, on the website of [VoteWatch Europe](#), you can see the [voting behaviour of the MEPs with regard to this motion](#) (for each MEP, political group or Member State).

⁸ Note that the newly elected Greek government informed that it will use its Parliament majority in order to not ratify TTIP.

2. BIG BUSINESS PULLING THE STRINGS

Negotiations about TTIP are only prima facie transparent. Even though the EU and US authorities seem to give a wide range of information on TTIP (objectives, negotiation rounds, timing...), the core business is being negotiated « backstage », **far away from any democratic space of public debate** and without any real involvement of public interest groups. When looking closer, it is obvious that it is **multinational corporations that keep a tight rein** on these negotiations. As mentioned above, big corporations steadily lobby both the European Commission and the US authorities.

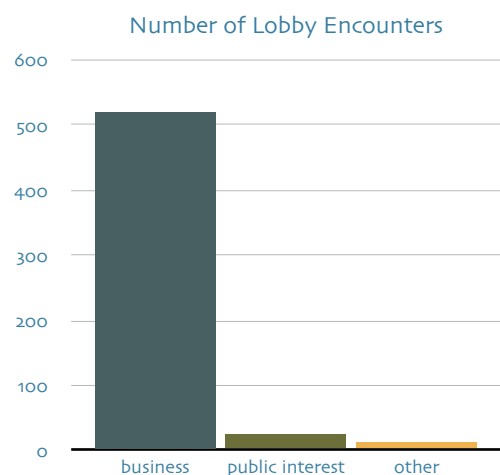


The European Commission's plan to enshrine sweeping rights for foreign investors in the proposed EU-US trade deal continues to draw heavy criticism, in particular the right for corporations to sue governments in private tribunals (see chapter 4).¹⁰ Despite claims of transparency by EU and US officials and unless a so-called public consultation (on the critical topic of investor-state dispute settlement¹¹), the European Commission is rolling out the red carpet for corporate and private interests within the scope of TTIP.

The European Commission explicitly fosters meetings with corporate lobby groups. As a matter of fact, when preparing the TTIP negotiations in 2012 and early 2013, the European Commission's trade department (DG Trade) was lobbied by 298 « stakeholders ».¹²

Amongst the identified stakeholders, 90% (269) of them were from the private sector (business representatives). 94 of these 269 (35%) private sector interest groups which have lobbied DG Trade on TTIP are not even registered in the EU's Transparency Register.¹³ A fact that confirms the blurry, secret and hidden dimension of these negotiations.

Furthermore, of all 560 lobby encounters that took place within this period (consultations, stakeholder debates and meetings behind closed doors), almost 93% of them were with business lobbyists. Some 4,5% encounters were with public interest groups (NGOs, trade unions, consumer organisations...), and 2,5% with other types of actors (such as individuals, academic institutions and public administrations).¹⁴



⁹ Cf. See TTIP on the website of the [European Commission](#) and on the website of the [United States Trade Representative](#).

¹⁰ TTIP: debunking the business propaganda over investor rights, by Corporate Europe Observatory, Brussels, July 2014.

¹¹ This consultation took place between 27th March and 13th July 2014. Read here the [report of this consultation](#).

¹² See the investigation done by Corporate Europe Observatory: « [Who lobbies most on TTIP?](#) », 8th July 2014.

¹³ Amongst them large companies such as Walmart, Walt Disney, General Motors, France Telecom and Maersk. See website of the [Transparency Register](#).

¹⁴ Cf. « [Who lobbies most on TTIP?](#) » (op.cit.). You can find here [an exhaustive list of these meetings](#).

Amongst the top-25-« stakeholders » who had most lobby contacts with DG Trade during these preparations, there was no trade union, environmental organisation or consumer group. In the top 50, there were 3.¹⁵

Besides, we also need to stress upon the fact that not only top European Commission representatives have close links with industry lobby groups, but also many MEPs. Evidence for that is provided by the Transatlantic Policy Network (TPN)¹⁶, launched in 1992, whose main objective is «to promote the closest possible partnership between the Governments and the peoples of the European Union and the United States». On TPN's homepage can be read:

« TPN's immediate priority is to strongly encourage the United States and the European Union to agree a Transatlantic Trade and Investment Partnership (TTIP). [...] From a small base of original supporting the European Parliament and the US Congress, TPN has grown into a broadly-based multi-party group of EU and US politicians, corporate leaders, influential think-tanks and academics. Through constant informal dialogue and the maintenance of close personal relationships, TPN participants keep the two administrations focused on the indispensability of pursuing the goal of a strengthened Transatlantic Partnership. »

In the last legislation period (2009-2014) of the European Parliament, there were some 80 MEPs being member of TPN. Amongst the newly elected MEPs, there are already almost 50 being a member¹⁷, amongst which e.g. the chair of the Foreign Affairs Committee of the European Parliament (EP), Mr. Elmar Brok (who is also the Vice-Chairman of TPN's EU Steering Committee), the vice-chair of the Security and Defence Committee of the EP, Mr. Christian Ehler, or the chair of the Internal Market and Consumer Protection Committee of the EP, Mrs. Vicky Ford. The EP Committee International Trade, that will have to play a predominant part in the approval of the TTIP by the European Parliament, also has some MEPs being member of TPN. Alongside EU Parliament and US Congress members, TPN has, above all, numerous business members¹⁸ as well as other types of cooperating organisations¹⁹ such as Study Centres, Commerce and Competitiveness institutions or international institutes. As a matter of fact, the MEPs being member of TPN swear allegiance to the proposed free market model under TTIP and undoubtedly encounter a conflict of interest with public interest.²⁰

Such conflicts of interest are an ongoing common reality. The « revolving door » phenomenon, a movement of people between roles as legislators and regulators on the one hand, and industries and corporations affected by legislation and regulation on the other hand, is a concrete threat for public interest.²¹ As an example, let us mention the new EU Commissioner for Climate Change and Energy, Mr. Miguel Arias Cañete, who has very close links with agricultural industries and petroleum companies. « Throughout his career, Arias Cañete has been involved in numerous controversies and often been accused of mingling business interests with public office. »²² Another telling example - the other way

¹⁵ Idem.

¹⁶ See [Transatlantic Policy Network \(TPN\)](#).

¹⁷ The list of [MEPs being member of TPN](#).

¹⁸ The list of [corporations being member of TPN](#).

¹⁹ The list of [other institutions cooperating with TPN](#).

²⁰ For your further information: At a first glance, one may be surprised by discovering the one or other progressive-claimed MEP being listed on this website as a TPN-member (e.g. Pervenche Berès or Reinhard Bütikofer). For the sake of nuance, and based on the latter's critical declarations with regard to TTIP, we very much suppose that they continue their fight within this network.

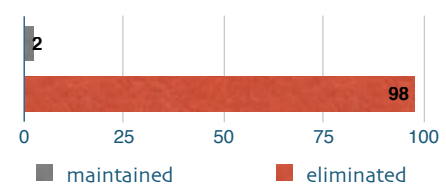
²¹ For more information on this topic, see the website of [ALTER-EU](#) (Alliance for Lobbying Transparency and Ethics Regulation), the [RevolvingDoorWatch](#) of Corporate Europe Observatory (a database of commissioners, MEPs and officials who have gone through the revolving door into lobby or industry jobs), and the article « [Old Commissioners, new revolving doors](#) » (by Vicky Cann in *EurActiv*, 21st January 2015).

²² See [article](#) on the website of Corporate Europe Observatory.

around, i.e. from public to private affairs - is the one of outgoing Vice-President of the European Commission and Commissioner for Justice, Fundamental Rights and Citizenship, Mrs. Viviane Reding, who - after having left her mandate in the European Commission - has become board member of international mining and metal company Nyrstar²³ and also board member of German giant Bertelsmann²⁴, one of the most important European corporations fervently lobbying in favour of TTIP. Especially dubious is the fact that Mrs. Reding, despite her move to Nyrstar and Bertelsmann, keeps on being a MEP (she was elected in the European Parliament in May 2014) and, within the European Parliament, a member of the Committee on International Trade.²⁵

This partisan and biased attitude of important public mandatories in favour of huge corporations and of the latter's profit-making machine constitutes a real danger for public interest. TTIP would add extra largesses to an already wide number of existing facilities permitting corporations to increase their profits (let us just briefly mention the recently revealed LuxLeaks organizing tax avoidance and evasion for corporations and banks²⁶). TTIP will increase corporate power and profit-making, amongst others through the downwards harmonisation of barriers, at the cost of numerous social, environmental, labour- and consumer-related standards. This is already the case with the Comprehensive Economic and Trade Agreement (CETA) between Canada and the European Union²⁷ that already describes in a premonitory way what will happen afterwards with TTIP: within the scope of CETA, 98% of all tariff barriers on goods and services will be eliminated between Canada and the EU. The CETA also enshrines important extra investor protection rules that will damage public goods and services in both the EU and Canada.²⁸

CETA: percentage of tariff barriers on goods and services between EU & Canada



Generally summed up, concerning TTIP, the commercial contract will take precedence even more strongly over the social contract.

²³ Read [more here](#).

²⁴ Read [more about this here](#) (in German).

²⁵ In this Committee, Mrs. Viviane Reding is the rapporteur of the plurilateral TiSA talks, the [Trade in Services Agreement](#), currently negotiated between 23 members of the World Trade Organisation (WTO) and based on the latter's General Agreement on Trade in Services (GATS). (TiSA aims at extreme liberalization of services and increased deregulation in order to ensure greater corporate profits at the expense of workers, farmers, consumers and the environment. The 11th round of negotiations towards the TiSA began on 9th February 2015 in Geneva. Like TTIP, and unless Commission promises for more transparency, these TiSA-negotiations are secret ones as well. Also see « [342 civil society groups oppose deregulation and privatisation in proposed services agreement TiSA](#) ».) Furthermore, in order to expose the very nature of this conflict of interest, Mrs. Reding, as an MEP, already produced a motion for a resolution [on the steel sector in the EU: protecting workers and industries](#), whereas she is simultaneously defending, as a board member, steel and mining giant Nyrstar.

²⁶ Within about 10 years, the Luxembourgish tax authorities and PricewaterhouseCoopers (PwC) concluded 548 agreements permitting a large-scale tax avoidance for more than 350 companies. Find more information about the investigation by the [International Consortium for Investigative Journalism](#) on the [LuxLeaks website](#) (Do also go to the [support website of whistleblower Antoine Deltour](#), former employee at PwC who came across these tax ruling documents of PwC and - appalled and revolted - finally revealed them. He risks five years of prison). Luxembourg is not the only EU Member State - secretly but legally - organizing tax evasion measures. The Netherlands, Ireland and Belgium, for instance, do also have their own « excess profit rulings » that allow a hefty tax evasion system exclusively to huge multinationals as well as does the recently revealed [Swiss Leaks](#) for private clients.

²⁷ The CETA was signed on 26th September 2014 in Ottawa. It still needs to be approved by the European Council and the European Parliament.

²⁸ Concerning CETA, we recommend the publication by EBERHARDT, Pia et al., [Trading Away Democracy. How CETA's investor protection rules threaten the public good in Canada and the EU](#), November 2014. An executive summary of this publication is available in [English](#), [Spanish](#), [Dutch](#), [French](#), [German](#), [Hungarian](#), [Czech](#), [Bulgarian](#), [Finnish](#) and [Danish](#).

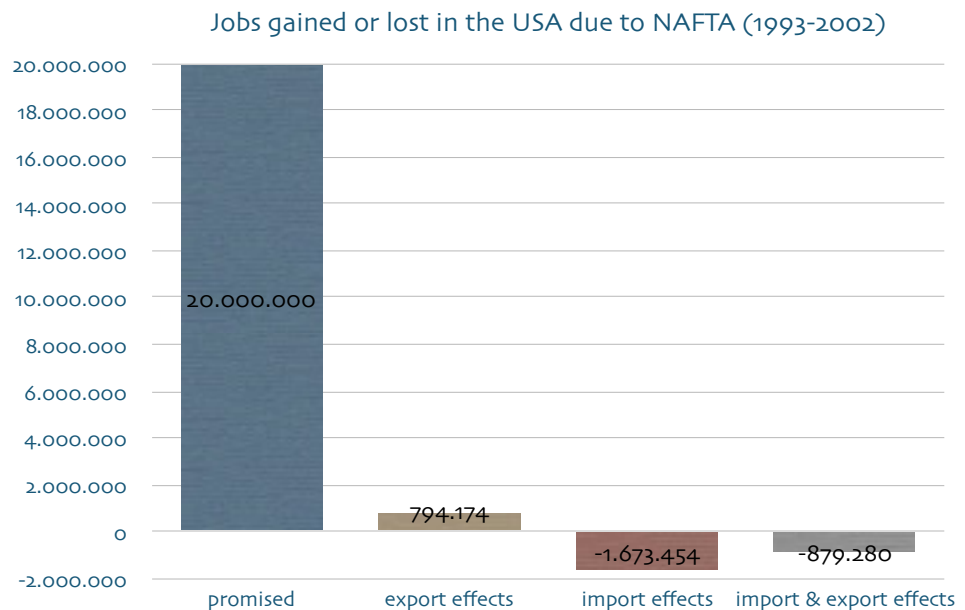
3. NEW JOBS & LABOUR RIGHTS

The European Commission argues that TTIP could bring 2 million extra jobs to the EU.²⁹ TTIP could bring « significant economic gains as a whole for the EU (€119 billion a year) and the US (€95 billion a year) once the agreement is fully implemented. This translates on average to an extra €545 in disposable income each year for a family of four in the EU. »³⁰

However, let us look to lessons from the past that should also draw our attention to this current discourse trying to sell TTIP as a benefit to EU and US citizens. In fact, and as a comparison, in the early 1990s, the North American Free

Trade Agreement (NAFTA)³¹ promised the creation of 20 millions of new jobs as a result of increased trade with Canada and Mexico. And if we were to take the NAFTA as an indication of what TTIP will bring, neither wealth nor job creation are to be expected.³² Twenty years after NAFTA was launched, none other than the US Chamber of Commerce had to recognize that the promise of job creation

did not materialize.³³ NAFTA resulted in the net loss of almost a million jobs (combined import and export efforts, cf. graph here above), and not in the creation of the 20 million jobs initially promised.³⁴



The promise of extra jobs underlies, amongst others, the « independent » but business-funded London-based Centre for Economic Policy Research. These promises have to be taken with utmost precaution, as claimed by numerous alternative studies. The Tufts University (Boston) puts forward that there will be a loss of 600,000 jobs in the EU.³⁵ Indeed, the job numbers differ wildly depending on the study.

²⁹ For further information, read the [study by Centre for Economic Policy Research \(CEPR\)](#), commanded by the European Commission, on the Impact Assessment of the future TTIP.

³⁰ See the article [Independent study outlines benefits if EU-US trade agreement](#) (italics are mine) on the website of the European Commission, Brussels, 12th March 2013.

³¹ Launched in 1993 by US President Mr. William J. Clinton.

³² BIZZARRI, Kim and EBERHARDT, Pia, [A Brave New Transatlantic Partnership. The proposed EU-US Transatlantic Trade and Investment Partnership \(TTIP/TAFTA\), and its socio-economic & environmental consequences](#), Seattle to Brussels Network (S2B), Brussels, October 2013, p.8.

³³ [NAFTA Triumphant – Assessing Two Decades of Gains in Trade, Growth and Jobs](#), by the US Chamber of Commerce, 2013, p. 9. Document [available here](#).

³⁴ See [analysis by the Economic Policy Institute \(EPI\)](#), December 2003.

³⁵ « TTIP would lead to job losses. We calculate that approximately 600,000 jobs would be lost in the EU. Northern European countries would be the most affected (-223,000 jobs), followed by Germany (-134,000 jobs), France (-130,000 jobs) and Southern European countries (-90,000). » See CAPALDO, Jeronim, [The Trans-Atlantic Trade and Investment Partnership: European Disintegration, Unemployment and Instability](#), Global Development and Environment Institute, Tufts University, Working Paper No. 14-03, October 2014, p.3. [Study available here](#).

The Commission-funded analysis by CEPR «explicitly disregards long-term employment effects. Hence, by definition, the analysis keeps the number of jobs constant and does in no way provide a basis for claims of net employment generation. »³⁶ Furthermore, the European Parliamentary Research Service states the following:

« The regulatory core of TTIP makes it extremely difficult for economists to come to grips with the expected economic meaning of the negotiation outcomes. NTBs [Non-tariff barriers] and mere regulatory heterogeneity create 'trade costs' for market access, both ways, but it is exceedingly hard to assess authoritatively what the trade costs are, and what consequences they have, whether for goods or services. Yet, without good proxies of those costs and the scope for their reduction, an empirical economic analysis with proper modeling is basically impossible or mere sophisticated 'guess' work. »³⁷

The harmonisation of rules and regulations between the EU and the USA could also have a serious impact on labour rights. On the one hand, it is well-known that the USA has not ratified - and always categorically refused to do so - several key labour standards and conventions of the International Labour Organization (ILO), including the conventions on freedom of association and trade union practices. Meanwhile, the European Commission's recent attack on workers' wages in the context of the Euro-crisis has started to shift the EU towards a more 'open and flexible approach' to labour standards.³⁸

When it comes to harmonization of non-tariff barriers, lessons from past show us that it is always a downwards harmonization of standards that took place. This was already the case with NAFTA³⁹, and this will be the case with TTIP.

As far as services and service providing are concerned: in recent EU free trade agreements (FTA), these topics are almost always dealt with within a chapter commonly called «Trade in Services, Investment & E-Commerce».⁴⁰ These chapters in FTAs concerning services all include three modes: 1) investment, 2) cross-border supply of services (i.e. services delivered within the territory of the member, from the territory of another member), and 3) temporary presence of natural persons for business purposes. Concretely, we are talking about the obligation of liberalization (and privatization) that will concern all levels of public governance: EU, national, sub-national and local.

Commercialization of public services is not a new trend, but an ongoing one, constantly recurring and coming back. There are many examples. It was brought up at the beginning of the Uruguay Round (in Punta del Este, Uruguay, in September 1986) which ended in 1994 with the Marrakech Agreement, leading to the creation of the World Trade Organisation (WTO) in 1995 and replacing the General Agreement on Tariffs and Trade (GATT). The GATS (General Agreement on Trade in Services), a treaty of the newly created WTO, entered into force in 1995 and obliges States to create a competitive environment for public and private enterprises.⁴¹ The Multilateral Agreement on Investment (finally aborted in 1998)

³⁶ SCHWARZER, Johannes, **TTIP and Jobs: Does the Emperor Have Clothes?**, in Council on Economic Studies, 21st August 2014. [Study available here](#).

³⁷ **EU-US Transatlantic Trade and Investment Partnership. Detailed Appraisal of the European Commission's Impact Assessment**, by European Parliamentary Research Service, April 2014, p. 50.

³⁸ BIZZARRI, Kim and EBERHARDT, Pia, *op.cit.*, p.10. Also see for more information on this topic two articles in the *euobserver*: « [New system of European governance' demands deeper austerity](#) » (9th September 2011) and « [Attack on labour: The Belgian showcase](#) » (31st May 2013).

³⁹ See BERNARD, Elaine, **What's the matter with NAFTA?**, The Labor and Worklife Program, at Harvard Law School, Cambridge (Massachusetts), 1994, p.6.

⁴⁰ With regard to TTIP, see this [leaked document](#) on « Trade, Investment and E-Commerce ».

⁴¹ It generally had been diminishing funding to public bodies, on the one hand, or providing specific aid for private structures, on the other hand.

planned to give corporations the possibility to sue States. More recently, the Directive on Services in the Internal Market (commonly referred to as the « Bolkenstein Directive ») was designed to break down barriers to trade in services across the EU, and help complete the single market.

Now, TTIP would also have considerable impact on services of general interest (health and social protection), when it comes to harmonize standards as far as health and social protection are concerned. The downwards harmonisation of these standards will go against social security systems and health services.⁴²

⁴² The USA have one of the most expensive health systems in the world (allocating more than 16% to it) and, at the same time, one of the worst ones amongst OECD countries (excluding some 50 million Americans from access to health care). For more information, also see [Health and Social Protection are not for Sale](#), Manifest of the European Network against Privatization and Commercialization of Health and Social Protection, Brussels, 7th February 2014.

4. CORPORATOCRACY: THE RULING OF BIG BUSINESS



The probably most controversial aspect of the currently negotiated TTIP is the inclusion of **investor-state dispute settlement (ISDS)**. The proposal for investor-state dispute settlement under the TTIP would enable companies to skirt European courts and directly challenge EU governments at international tribunals, whenever they find that laws in the area of public health, environmental or social protection interfere with their profits. Companies could demand taxpayer compensation for public interest policies that allegedly limit their profits – such as health and environmental protections. These arbitral tribunals will take precedence over domestic and EU laws and regulations.

It is crucial to stress that only companies can sue public authorities – not vice versa!

ISDS is an already existing mechanism that has quickly grown in the last 25 years. At the beginning of the 1990s, there had been two to three new cases within the scope of ISDS. In 2013, there were 57 new cases of corporations suing governments. And this happens in all types of political fields.

Corporations have sued governments in different areas such as **public health** (Uruguay and Australia)⁴³, **environmental protection** (Germany)⁴⁴, **government action against financial crises** (Argentina and Greece)⁴⁵, etc. For the last mentioned area, even the International Monetary Fund (IMF) and the United Nations (UN) have warned that investment agreements can critically restrict States' capacities to fight financial and economic crises.⁴⁶

The European Commission wants to convince the public that investor super rights do not endanger democracy and public policy. Yet, there are many reasons to be more than worried.⁴⁷

- ❖ First, **ISDS is a tool for big business to make governments pay when they regulate**. Around the world, companies use existing trade and investment agreements to claim compensation for perfectly legitimate government policies to protect health, the environment and other public interests –

⁴³ Example: *Philip Morris vs. Uruguay and Australia* on basis of the latter's anti-smoking laws. The company argues that warning labels on cigarette packs and plain packaging prevent it from effectively displaying its trademark, causing a substantial loss of market share. Quoted from Corporate Europe Observatory. For more information on this case, go to the website of the [International Institute for Sustainable Development](#).

⁴⁴ Example: In 2012, Swedish energy giant Vattenfall launched an investor-state lawsuit against Germany, seeking €3.7 billion in compensation for lost profits related to two of its nuclear power plants. The case followed the German government's decision to phase-out nuclear energy after the Fukushima nuclear disaster. Quoted from Corporate Europe Observatory. More information on this case, go to the website of the [International Institute for Sustainable Development](#). Also see the following article (*Vattenfall klagt gegen Atomausstieg. Ein Schiedsverfahren wird für Deutschland zum Bumerang*, by Prof. Dr. Hans-Georg DEDERER, in *Legale Tribune Online*, 12th June 2012) where the author explains the different reasons why Vattenfall did not chose the (national) constitutional complaint way, but a suing of Germany at an international arbitration court via [ICSID](#) rules.

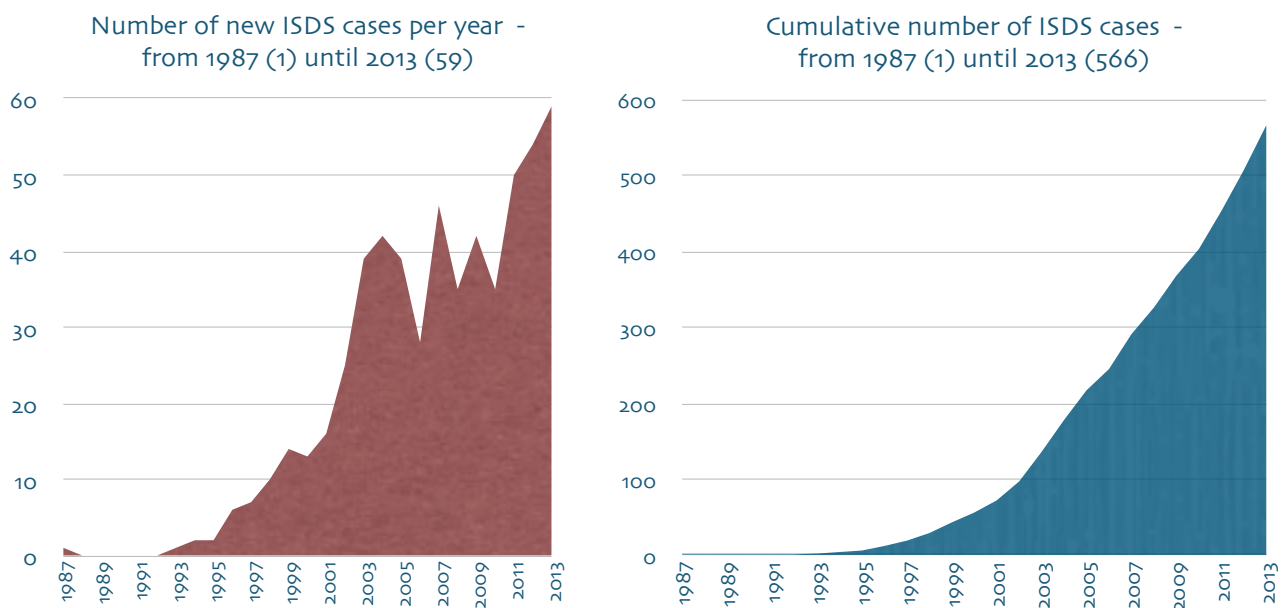
⁴⁵ 1st example: When Argentina froze utility rates (energy, water, etc.) and devalued its currency in response to its 2001-2002 financial crisis, it was hit by over 40 lawsuits from companies like CMS Energy (US) and Suez and Vivendi (France). By the end of 2008, awards against the country had totalled US \$1.15 billion. For more information, see *Argentina versus el Banco Mundial: ¿Juego limpio o partido arreglado?* in *Programa de las Américas* (article also available in English). 2nd example: In May 2013, Slovak and Cypriot investors sued Greece for the 2012 debt swap which Athens had to negotiate with its creditors to get bailout money from the EU and the International Monetary Fund (IMF). Both, the UN and the IMF have warned that investment agreements can severely curb states' abilities to fight financial and economic crises. See *Bondholders pursue Greece over debt haircut* by Sebastian Perry (in *GlobalArbitrationReview*, 7th May 2013).

⁴⁶ See *Sovereign Debt Restructuring and International Investment Agreements*, by Kevin P. Gallagher in *United Nations Conference on Trade and Development*, UNCTAD, Issues Note n°2, July 2011.

⁴⁷ All mentioned reasons are taken from the publication *Still not loving ISDS: 10 reasons to oppose investors' super-rights in EU trade deals*, by Corporate Europe Observatory, April 2014.

because they claim these policies have the indirect effect of undermining corporate profits. The highest compensation ever required was amounted 2.3 billion US dollar.⁴⁸

- ◆ Besides, **corporate super-rights are an instrument to rein in democracy**. There is evidence that proposed and adopted laws on public health and environmental protection have been abandoned or watered down because of the threat of corporate claims for multimillion dollar damages.
- ◆ Furthermore, **the investor rights provide VIP treatment to companies**. The investor rights in trade and investment agreements grant foreign investors greater property protection rights than are enshrined in national constitutions.⁴⁹
- ◆ Moreover, **the investor-state arbitration system is fundamentally flawed**, as it violates the principle of «equality before the law», as it is a one-sided process and judicially not an independent system (there is a built-in, pro-investor bias; the three for-profits arbitrators are chosen by the company). The NGO Corporate Europe Observatory does also show to what extent the European Commission does not even touch upon these basic flaws, unless what they are claiming amongst other through their reform agenda.
- ◆ Additionally, when looking at the two charts beneath⁵⁰, there is a demonstrated evidence that **the risks of being sued by big business are steadily increasing for governments**. Nowadays, the system is



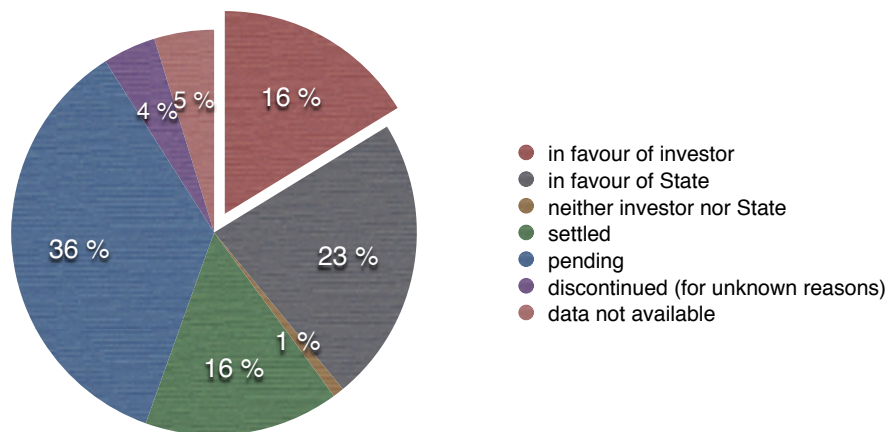
growingly better known by the big business world and many law firms get specialized in this area.⁵¹ Note that this arbitration system is also a juicy market for arbitrators (they make US\$ 3,000 a day at

⁴⁸ Ecuador had to pay this amount to US oil company Occidental Petroleum for having closed for ecology reasons an oil production site in the Amazon.

⁴⁹ Two examples: 1) German law does not stipulate any obligatory financial compensation for «indirect» or «regulatory» expropriations (de-facto expropriations, like in the case of Vattenfall vs. Germany), whereas within international investment law (like ISDS), compensations for de-facto-expropriations are a classical protection standard. 2) Whereas most domestic laws and rules do not consider expected profit as protected private property, investors regularly receive compensation for alleged lost future profits through ISDS mechanism. See *Al-Kharafi & Sons Co. vs. Libya*, where Libya was ordered - after an investment ruling procedure - to pay US\$ 935 million to the Kuwaiti company for - first and foremost- «lost future profits for 83 years», even though the company had only invested US\$ 5 million so far.

⁵⁰ Data coming from UNCTAD Database of Investor-State Investment Settlement (ISDS).

⁵¹ E.g. «Businesses are now more attuned to the potential relevance of investment treaties, not only as last-ditch protection when things go wrong but also as an important up-front risk mitigation tool when entering into investments.» by law firm Freshfields Brockhaus Deringer; or «The Increasing Appeal and Novel Use of Bilateral Investment Treaties» by law firm Skadden.



the International Center for Settlement of Investment Disputes, ICSID).⁵² The US American NGO Public Citizen estimates that TTIP « would newly enable corporate attacks on behalf of any of the U.S. and EU's more than 75,000 cross-registered firms. »⁵³ We want to refer to the excellent research published by Friends of the Earth Europe on ISDS cases against EU Member States⁵⁴ and focus on exclusively one number: of all 127 ISDS cases against EU Member States (from 1994 until 2014), the amount of compensation sought was publicly available for 62 out of the 127 cases (48%) and amounts to **€ 29,777,141,904**.⁵⁵ Almost € 30 billion that tax payers across the EU have to pay due to ISDS cases based on Bilateral and International Investment Agreements.⁵⁶

- ◆ Beyond this, **the investor privileges enable backdoor corporate attacks on court decisions**.⁵⁷
- ◆ Finally, and contrary to what TTIP defenders claim, **investor rights do not bring the economic benefit**. The European Commission states that investment protection agreements create a framework that encourages investment. Yet, there is no evidence of link between investment treaties and investment flow.⁵⁸ A study conducted by the London School of Economics says that « existing evidence suggests that the presence of an EU-US investment chapter is highly unlikely to encourage investment above what would otherwise take place. »⁵⁹

⁵² See *Investor-State Dispute Settlement: A Sequel*, in *UNCTAD Series on International Investment Agreements II*, New York and Geneva, May 2014, p.146. Besides, « legal and arbitration costs average over US\$ 8 million per investor-state dispute, exceeding US\$ 30 million in some cases. Elite law firms charge as much as US\$ 1,000 per hour, per lawyer – with whole teams handling cases. Arbitrators also earn hefty salaries, amounting up to almost US\$ 1 million in one reported case. These costs are paid by taxpayers, including in countries where people do not even have access to basic services. For example, the Philippine government spent US\$ 58 million defending two cases against German airport operator Fraport; money that could have paid the salaries of 12,500 teachers for one year or vaccinated 3.8 million children against diseases such as TB, diphtheria, tetanus and polio. » in OLIVET, Cecilia and EBERHARDT, Pia, *Profiting from injustice. How law firms, arbitrators and financiers are fuelling an investment arbitration boom*, Corporate Europe Observatory and Transnational Institute, Brussels/Amsterdam, November 2012, p.7.

⁵³ See *TAFTA Corporate Empowerment Map*, in *Public Citizen*, 2013.

⁵⁴ GERAGHTY, Emma Jayne and CINGOTTI, Natacha, *The Hidden Cost of EU Trade Deals: Investor-State Dispute Settlement Cases against EU Member States*, Friends of the Earth Europe, Brussels, 4th December 2014.

⁵⁵ Ibidem, p.7.

⁵⁶ See here an exhaustive [list of BITs and IITs per State](#).

⁵⁷ See BEACHY, Ben, *Ecuador's Highest Court vs. a Foreign Tribunal: Who Will Have the Final Say on Whether Chevron Must Pay a \$9.5 Billion Judgment for Amazon Devastation?*, in *Eyes on Trade*, Public Citizen, 11th December 2013.

⁵⁸ See *The Importance of BITs for Foreign Direct Investment and Political Risk Insurance: Revisiting the Evidence*, by Lauge N. SKOVGAARD POULSEN, in *Yearbook on International Investment Law and Policy 2009/2010*, New York: Oxford University Press, 2010, pp. 539-574.

⁵⁹ SKOVGAARD POULSEN, Lauge N., BONNITCHA, Jonathan and WEBB YACKEE, Jason, *Costs and Benefits of an EU-USA Investment Protection Treaty*, London School of Economics, London, April 2013, p.44.

The **public consultation** (cf. chapter 2) with regard to ISDS, organized between March and July 2014, almost gathered 150,000 answers (the highest number of responses ever received within the scope of an EU consultation). Even though an importantly high percentage of respondents expressed deep concern and opposition to ISDS (97%), the European Commission - in its typical apologetic rhetoric - keeps more than dangerously vague about TTIP.⁶⁰ Many divergent voices (citizens, academics, elected representatives and governments, trade unions, and even businesses likes small-sized enterprises) are deliberately ignored by the European Commission.⁶¹

And the negotiators from the European Commission continue to favour business lobbyists when it comes to influence key decision makers with regard to TTIP.



image taken from the « Sponsorship and Exhibition Prospectus » (Forum Europe)

Within the scope of the 8th round of negotiations between the EU and the USA, and one day after the so-called « stakeholders engagement event » (on 4th February 2015)⁶², a « leading EU dedicated conference and event provider », Forum Europe, organized the 2nd Annual EU-US Trade Conference in Brussels (5th February 2015). In the « Sponsorship and Exhibition Prospectus » published beforehand, one can notice that, if you want to talk in front of the most eminent decision makers on TTIP, you have to pay €10,000 (VAT excl.). There is no

need to remind that this is an unaffordable amount of money for the huge majority of civil society organisations.⁶³

⁶⁰ Cecilia Malmström, Commissioner for Trade, said that « the consultation clearly shows that there is a huge scepticism against the ISDS instrument », but, at the same time, clarifies that « the consultation was not a referendum ».

⁶¹ See on this topic the following analysis: EBERHARDT, Pia, *TTIP investor rights: the many voices ignored by the Commission*, Corporate Europe Observatory, 3rd February 2015.

⁶² To a very large extent only business representatives (see footnote 4 on page 3).

⁶³ We invite you to discover the [telling amounts of money mentioned in this prospectus](#) allowing - as a matter of fact - almost exclusively speeches by and visibility for corporate representatives. More information on this [2nd annual conference](#).

CONCLUSION

TTIP, as all other free trade agreements (e.g. CETA) and instruments (e.g. GATS and TiSA), not only aims at extending the privatisation of public services, hence threatening a huge amount of fundamental acquis, be it in the social, labour rights, environmental, agricultural, data protection, justice or consumer rights areas. By attacking the principle of standstill or of non-regression⁶⁴, established by international human rights law, by attacking the principle of independence of justice, it also attacks the very fundamentals of democracy.

Civil-society resistance has proved fruitful several times. The most telling and closest example is that of the Multilateral Agreement on Investment (MAI): between 1995 and 1998, OECD members - the leading industrialized nations - pushed for agreement on the MAI, negotiated behind closed doors. When the public version of the MAI came out, civil-society mobilisation managed to scupper the negotiations.⁶⁵ It was also in 1998 that the NGO ATTAC was founded⁶⁶, and that the World Social Forum first met in 2001.

Different ways exist to take action.

■ First...: **Get informed.**

Many organisations have been working and trying to raise awareness on TTIP, at national level (civil society organisations like Attac and trade unions) and at EU and international levels (CEO, TNI, ETUC, Public Citizen, etc.).

■ Sign the **STOP TTIP! Initiative**.⁶⁷

Note that this is a « self-organized » European Citizens' Initiative, not officially recognized by the European Commission. The European Citizens' Initiative (ECI) was created by EU Treaties and is an invitation to the European Commission to propose legislation on matters where the EU has competence to legislate. The ECI must respond to several conditions.⁶⁸ Yet, the European Commission refused the request for registration of an official ECI, initiated by some 240 European civil society organisations, movements and trade unions, arguing in a pseudo-technical and legal justification language that « the proposed citizens' initiative falls manifestly outside the framework of the Commission's powers to submit a proposal for a legal act of the Union for the purpose of implementing the Treaties. »⁶⁹

■ **Strengthen alliances.**

There are already existing alliances at national and European levels. Get informed!

- at national level (e.g. in Belgium the Alliance D19-20, in France the Collectif national unitaire stop TAFTA, or in Spain the Campaña NO al TTIP)
- at European level: see above all the signing organisations of the STOP TTIP Initiative.

⁶⁴ This principle requires that norms which have already been adopted by States shall not be revised, if this implies going backwards on the subject of standards of protection of collective and individual rights.

⁶⁵ See amongst others the article « *How the MAI was dashed into pieces* »; DE BRIE, Christian « *Comment l'AMI fut mis en pièces* », in *Le Monde Diplomatique*, December 1998.

⁶⁶ The then director of *The Monde Diplomatique*, Mr. Ignacio RAMONET, suggested in his editorial « *Désarmer les marchés* » (« *Disarm the Markets* ») the creation of an « Association for the Taxation of financial Transactions and Citizen's Action » (ATTAC), in *Le Monde Diplomatique*, December 1997.

⁶⁷ You can sign the petition [here](#). You can also see the [total amount of signatures gathered and what countries have already reached the national quorum](#).

⁶⁸ Read here more information on the [ECI procedure and conditions](#).

⁶⁹ See the Commission's answer on the official [ECI website](#).

AND EAPN IN ALL THIS...?

In what way and to what extent can the European Anti-Poverty Network (EAPN) get engaged vis-à-vis the topic of TTIP as it will have an impact on areas EAPN works on: (un)employment, social standards, liberalization of services...

EAPN closely follows up the Europe 2020 Strategy and its implementation which is the overarching strategy at EU level supposed to deliver on the quality of jobs, on the creation of quality job, on the fight against poverty and social exclusion, on the access to quality services, etc. At mid-term of this strategy, we acknowledge a general failure on the social targets, due to an economic paradigm pursued by the EU which is the core issue. Social Europe has been seriously under threat inside the EU, not to say that it is literally being dismantled.⁷⁰ The TTIP, driven and pushed by economic and financial leaders and corporate power, follows the same paradigm, and for what it seems, an even worse scenario, aiming at destroying any kind of social protection. If the TTIP enters into force as it is, EU2020 will only follow suit.

- ▶ This paper will hopefully provide EAPN members with enough **information** to discuss the links between TTIP and its areas of work and priorities (notably links TTIP – EU 2020 Strategy).
- ▶ It will hopefully help EAPN (“the largest European network of national, regional and local networks, involving anti-poverty NGOs and grassroots groups as well as European organisations, active in the fight against poverty and social exclusion”) to take a position which can be done easily by simply co-signing already existing actions. In the European Parliament (EP), the final vote on the TTIP resolution will be in May 2015. So far, 12 EP Committee have decided to draft an opinion.⁷¹ It is important that we start pressuring our MEPs now while the EP is drafting the resolution. The NGO Global Justice Now reported that an MEP recently said with regard to TTIP: « Many MEPs are like leaves in the wind. If they see public opinion is changing they will blow with it. » EAPN can **support and join a large alliance of civil society organisations** in their common statement to the European Parliament and MEPs. **Deadline is 25th February 2015**. You can find here the statement « [For a TTIP resolution that puts people, the environment and democracy before short-term profit and disproportionate corporate rights](#) ». So far, this statement is also available in [German](#), [French](#), [Polish](#) and [Portuguese](#).
- ▶ Depending on its analysis/discussion of the implications of such issues on its core-work issues, and according to its resources, EAPN will decide how it engages. So many organisations have been actively working on the topic that EAPN could join actions without having to design new actions and it is also important to strengthen existing actions which need the support of as many as possible. Civil-society organisations and trade unions must put their efforts together in a common front as much as possible. **Giving visibility to these actions and to EAPN's support** to the latter is key.
- ▶ The current reality of corporate power, being explicit in the TTIP negotiations, needs to be taken into account in **EAPN's internal discussion on private and corporate funding**. At the EXCO meeting in Warsaw (March 2014), a [discussion paper on principles for commercial support and sponsorship](#) was presented in order to stimulate internal reflexions on this topic. In my opinion, corporate funding should be categorically excluded as it is a mere “greenwashing strategy” for corporations as these corporations do foster the corporate power versus the public interest. I believe that only in very exceptional circumstances (if an enterprise fulfills all ambitious ethical criteria previously decided upon), a private sponsorship or funding from that enterprise could be taken into consideration.⁷²

⁷⁰ One example: One of the five headline targets of the Europe 2020 Strategy says that 75% of the 20-64 year-olds should be employed by 2020. There is no evolution. ⁷⁰ On the contrary (in 2008, the employment rate of the 20-64 year-olds was of 70,3%, in 2013 this rate was 68,4%, a drifting away from the EU2020 target).

⁷¹ See here the [Draft Opinion of the Committee on Employment and Social Affairs](#) for the Committee on International Trade on « Recommendations on the negotiations for the Transatlantic Trade and Investment Partnership (TTIP) ».

⁷² No need to explicit that corporations profiting from tax evasion or avoidance systems, corporations not registered in the European Transparency Register, corporations having already sued a government within an ISDS procedure, etc... that those corporations are categorically excluded as potential sponsors.

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This list includes both the publications referred to in this paper and other general publications, articles and documents worth reading on the topic of the Transatlantic Trade and Investment Partnership (TTIP) and its context. Most mentioned references are in English language. Some publications are also in French and German. You can easily find analytical documents and articles on this topic in other European languages via civil society organisations (Attac, etc.) and/or trade unions at national levels. Almost all publications mentioned here beneath are available on the Internet and can be downloaded (except for very few books or articles that we have in printed version). At the end of the bibliography, you also have a list of some Internet websites where you can find thorough information and analysis about TTIP.

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WALLACH, Lori M. and KÄCKLEIN, Wolf, **Dix Menaces pour le peuple américain... et dix menaces pour les peuples européens**, in *Le Monde Diplomatique*, juin 2014, pp. 12-13.

WALLACH, Lori M., **Le traité transatlantique, un typhon qui menace les Européens**, in *Le Monde Diplomatique*, novembre 2013, pp. 4-5.

Who lobbies most on TTIP?, by Corporate Europe Observatory, 8th July 2014.

WEBSITES

This list is far from being comprehensive. Other websites can be found in the above mentioned footnotes.

Some Civil Society Websites

- [Alliance for Lobbying Transparency and Ethics Regulation \(ALTER-EU\)](#)
- [ATTAC](#)
- [Corporate Europe Observatory \(CEO\)](#)
- [EU Secret Deals: EU Investment Policy: Looking behind closed doors](#)⁷³
- [Seattle to Brussels Network](#)⁷⁴
- [Self-Organised European Citizens' Initiative against TTIP and CETA](#)
- [RevolvingDoorWatch](#)
- [Transnational Institute \(TNI\)](#)
- [Letter to MEPs with regard to European Parliament Resolution on TTIP](#) by Collectif National Stop TAFTA
- [Bilaterals](#)

Some Leaked Documents

- [Initial Provisions for Regulatory Cooperation](#) - TTIP-EU-Regulatory-Coherence-Draft-Proposal (15th January 2015)
- [TTIP - Sanitary and Phytosanitary Issues - Draft SPS chapter](#) (27th June 2014)
- [EU negotiation position «on raw materials and energy»](#) (20th September 2013)
- [Trade in Services, Investment and E-Commerce](#) (2nd July 2013)
- [TTIP: Cross-cutting disciplines and Institutional provisions. Position paper – Chapter on Regulatory Coherence](#) (December 2013)

Other

- [Le Monde Diplomatique](#)
- [VoteWatch Europe](#)
- [Ask the EU](#)
- [European Union Transparency Register](#)
- [Transatlantic Policy Network](#)
- [Luxemburg Leaks](#)

⁷³ On this website, you can find several leaked documents with regard to TTIP and CETA.

⁷⁴ On this website, you can find [member organisations](#) of the S2B Network from 15 EU Member States.