

**THE 2014 EUROPEAN PARLIAMENT
ELECTIONS AND THE TRANSATLANTIC
TRADE AND INVESTMENT PARTNERSHIP:
ECONOMICS AND POLITICS COLLIDE**

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I. INTRODUCTION

European Union (EU) voters began casting ballots for the newest five-year European Parliament¹ on the same day negotiators concluded their fifth round of bargaining on the proposed Transatlantic Trade and Investment Partnership (TTIP). With the potential to create the world’s largest free-trade area,² results from the fifth round of TTIP negotiations

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1. *European Elections 2014*, EUROPEAN PARLIAMENT, http://www.europarl.europa.eu/us/en/elections_2014.html (last visited Feb. 6, 2015).

2. See *Transcript from the Closing Press Conference of the Fifth Round of Transatlantic Trade Investment Partnership (TTIP) Negotiations*, OFFICE OF THE U.S. TRADE REP. (May 23, 2014), <https://ustr.gov/about-us/policy-offices/press-office/speeches/transcripts/2014/May/Transcript-from-Closing-Press-Conference-Fifth-Round-TTIP->

were unremarkable.³ Meanwhile, European voters sent a shockwave through Europe.

Termed a political “earthquake,” the election results thrust anti-establishment political parties from the left and right into the headlines.⁴ Diverse populist parties across Europe had campaigned fiercely on anti-EU issues, exploiting economic hard times as well as xenophobic, anti-immigration, and racist sensitivities.⁵ Voters surprised the world with a positive response to these negative themes.⁶ “The four-day European Parliament election . . . served up a clear message of voters fed up with economic distress, belt-tightening austerity, immigration and, most of all, aloof and meddlesome bureaucrats in Brussels.”⁷

In four EU Member States (France, the UK, Greece and Denmark), anti-establishment political parties actually came in first place, embarrassing the traditional center-right and center-left mainstay parties.⁸ More importantly, the election results set into motion an existential political process to choose the next

Negotiations [hereinafter TRANSCRIPT]. For a detailed description of the TTIP, see *infra* Part IV.

3. U.S., *EU Wrap up Fifth Round of Trade Talks Without Breakthroughs*, SHANGHAI DAILY (May 24, 2014), http://www.shanghaidaily.com/article/article_xinhua.aspx?id=220220.

4. Multiple sources repeated the “earthquake” metaphor. See, e.g., *European Elections: Ten Highlights*, BBC NEWS (May 28, 2014, 12:13 AM), <http://www.bbc.com/news/world-europe-27601937>; see also *EU Leaders Assess Damage After ‘Earthquake’ Election*, FR. 24 (May 28, 2014), <http://www.france24.com/en/20140528-eu-damage-earthquake-election-merkel> (“European Union leaders, stunned by a massive Eurosceptic protest vote in parliamentary elections last weekend, agreed on Tuesday to seek a package deal of appointments to top EU jobs with an economic agenda to win back public confidence.”).

5. See *infra* Part II.A.

6. Andrew Higgins, *Populists’ Rise in Europe Vote Shakes Leaders*, N.Y. TIMES, May 26, 2014, http://www.nytimes.com/2014/05/27/world/europe/established-parties-rocked-by-anti-europe-vote.html?_r=0 (“President François Hollande of France . . . addressed his nation on television . . . giving a mournful review of an election that he said had displayed the public’s ‘distrust of Europe and of government parties.’ He added: ‘The European elections have delivered their truth, and it is painful.’”).

7. Bryan McManus & Claire Rosemberg, *EU ‘Too Big, Too Bossy’, Says Cameron at Vote Postmortem*, AGENCE FR. PRESSE (May 28, 2014, 2:30 AM), <http://www.gmanetwork.com/news/story/362971/news/world/eu-too-big-too-bossy-says-cameron-at-vote-postmortem>.

8. See Tony Barber, *Election Results Show a Europe Short of Confidence in Its Future*, FIN. TIMES, May 26, 2014, <http://www.ft.com/intl/cms/s/0/49f1eab4-e4d8-11e3-9b2b-00144feabdc0.html?siteedition=intl#slide0>; see also *The Eurosceptic Union*, ECONOMIST, May 31, 2014, <http://www.economist.com/news/europe/21603034-impact-rise-anti-establishment-parties-europe-and-abroad-eurosceptic-union>; Stefan Wagstyl, *Germany’s Anti-Euro Party AfD Breaks National Taboos*, FIN. TIMES, May 22, 2014, <http://www.ft.com/intl/cms/s/0/6a6705ac-db84-11e3-a460-00144feabdc0.html#axzz33zO3tkdy> (stating that electing neo-nationalists in Germany had been a long-standing post-war taboo).

tableau of EU leaders that would challenge the EU's democratic ethos.⁹

This article examines the 2014 European Parliament elections and their impact on the future functioning of the EU and, in particular, their effect on the TTIP negotiations. This analysis proposes the resultant thesis that political leaders in Europe have undertaken and will continue to navigate a cautious, even timid, course through the sensitive issues threatening their political security, including especially EU-related issues.

Thus, the EU's political leaders will exercise a diminished willingness to engage in meaningful negotiations of trade concessions and regulatory compromises, yielding a modest TTIP or perhaps no agreement at all. Along the way, the national leaders will try to fight a backfire in the European Parliament, resisting post-Lisbon Treaty attempts by the Parliament to aggrandize stronger leadership power.

II. PARLIAMENTARY ELECTION RESULTS, ECONOMICS, AND THE EUROPEAN UNION

Beginning in 2007 with the U.S. housing market meltdown, a global financial crisis ensued, causing "the worst recession the world has witnessed for over six decades."¹⁰ Termed the "Great Recession," the economic malaise spread to Europe, as economies in almost every EU Member State entered a six-year period of contraction.¹¹

Economic pain, in many forms and degrees, spread across the continent. In the poorer, southern countries, and in the north in Ireland, the consequences were extreme, including bank failure crises leading to sovereign debt crises.¹² In Spain, a property

9. Charlemagne, *Has Merkel Lost Her Touch?*, ECONOMIST (June 3, 2014, 8:25 PM), <http://www.economist.com/blogs/charlemagne/2014/06/battle-european-commission> ("An arcane squabble about Brussels jobs has become a moral argument about different visions of democracy and a battle about Britain's place in Europe.")

10. Sher Verick & Iyanatul Islam, *The Great Recession of 2008-2009: Causes, Consequences and Policy Responses 2* (Inst. for the Study of Labor, IZA Discussion Paper No. 4934, May 2010), available at <http://ftp.iza.org/dp4934.pdf>.

11. This destructive economic development has been widely described and analyzed. *Id.* at 3; cf. *Wasted Potential*, ECONOMIST, June 14, 2014, <http://www.economist.com/news/finance-and-economics/21604188-counting-long-term-costs-financial-crisis-wasted-potential> ("The rich world is at long last clawing its way from the economic ditch of the Great Recession. This year [2014] may be the first since 2007 in which all big advanced economies manage to grow.")

12. *Why Did the Crisis Happen?*, DIRECTORATE-GEN. FOR ECON. & FIN. AFFAIRS, EUROPEAN COMM'N, http://ec.europa.eu/economy_finance/explained/the_financial_and_economic_crisis/why_did_the_crisis_happen/index_en.htm (last updated Apr. 9, 2014) ("What started as a banking crisis became a sovereign debt crisis.")

bubble magnified the downturn.¹³ Job losses, strained personal budgets, and house foreclosures struck hard;¹⁴ suicides and other evidence of acute mental suffering afflicted many people.¹⁵

Media accounts vividly portrayed the widespread distress:¹⁶

Across southern Europe, millions of families are living in misery, as rates of unemployment exceed 25[%] in Greece and Spain and approach 15[%] in Portugal (and, on the western periphery, in Ireland), while the salaries of teachers, nurses, and other public employees are slashed, and firms go bankrupt in unprecedented numbers. The suicide rate in Greece has doubled during the past three years.¹⁷

The economic chain reactions in some national budgets multiplied the stress. For example, in Portugal, the country's welfare services became severely strained "during the country's bailout programme as unemployment soared to record levels and incomes were slashed while health, education and social security budgets were cut back."¹⁸

Economist Laurence Ball of Johns Hopkins University analyzed the costs of the 2008 "Great Recession," comparing OECD estimates of pre- and post-economic potential.¹⁹ Greece suffered mightily with a 30% fall in its economic growth.²⁰

13. Paul Day, *Bank of Spain Says Latest Data Shows Recovery Continuing*, REUTERS, June 13, 2014, available at <http://www.reuters.com/article/2014/06/13/spain-economy-idUSL5N0OU23A20140613>.

14. "The increased job insecurity due to the recession has resulted in sustained and devastating impacts on individuals, families, households and their communities[,] . . . resulting in the loss of homes to foreclosure and increases in poverty, debt and bankruptcy, especially in the . . . advanced economies." U.N. DEPT OF ECON. & SOC. AFFAIRS, THE GLOBAL SOCIAL CRISIS 27, U.N. Doc. ST/ESA/334 (2011).

15. Melanie Haiken, *More Than 10,000 Suicides Tied to Economic Crisis, Study Says*, FORBES, June 12, 2014, <http://www.forbes.com/sites/melaniehaiken/2014/06/12/more-than-10000-suicides-tied-to-economic-crisis-study-says/>; see also *Mental Health*, HEALTH & FIN. CRISIS MONITOR, <http://www.hfcm.eu/web/impact-of-the-current-crisis-on-health/mental-health> (last visited Feb. 6, 2015) (providing an extensive list of studies reporting severe degrading mental health in this economic decline).

16. See, e.g., Jon Henley, 'Recessions Can Hurt, but Austerity Kills', GUARDIAN, May 15, 2013, <http://www.theguardian.com/society/2013/may/15/recessions-hurt-but-austerity-kills>.

17. Peter A. Hall, *Anatomy of the Euro Crisis*, HARV. MAG., July-Aug. 2013, at 24.

18. Peter Wise, *Austerity Stretches Portuguese Welfare System to Breaking Point*, FIN. TIMES, Apr. 21, 2014, <http://www.ft.com/intl/cms/s/0/38381070-c951-11e3-bba1-00144feabdc0.html?siteedition=intl#axzz3AVL5djUa>.

19. Laurence M. Ball, *Long-Term Damage from the Great Recession in OECD Countries 1* (Nat'l Bureau of Econ. Research, Working Paper No. 20185, 2014), available at <http://www.nber.org/papers/w20185>.

20. Ireland lost 27%, Spain 18%, Portugal 12%, and the UK 11%. *Id.* at Table 1.

The economic downturn in Europe began in 2010; as underlying structural issues in some economies, including massive, unsustainable government deficits and public debt levels, threatened the Eurozone's viability, EU and Member State leaders took emergency action.²¹ Later that year, the *troika* of the European Central Bank, the European Commission, and the International Monetary Fund (IMF) intervened with rescue loans and other measures to calm the markets.²² However, this financial aid for the worst-pressed national governments was forthcoming only on the condition that national political leaders agreed to reform excessively unbalanced national budgets and to reduce overstretched payouts for benefits and services.²³

These reforms, often called "austerity measures," necessitated reduced government salaries, benefits, and financial assistance, as well as legislation removing protection from certain sectors of the economies.²⁴ Naturally, the measures were unpopular, as protests rose and political regimes in the affected countries collapsed.²⁵ Huge public protests in the affected countries reflected "a growing wave of public hostility towards cuts in public spending amid rising unemployment - and mounting pressure from Brussels for fiscal austerity."²⁶

Predictably, negative economic dynamics continued. The mandated national budget cuts reduced sums for people to spend, further reducing economic activity, again lowering government tax revenues, and driving people's frustration higher.²⁷ National

21. See Christopher Alessi, *The Eurozone in Crisis*, COUNCIL ON FOREIGN RELATIONS, <http://www.cfr.org/eu/eurozone-crisis/p22055> (last updated Apr. 3, 2013).

22. *Id.*; see also *Financial Assistance in EU Member States*, DIRECTORATE-GEN. FOR ECON. & FIN. AFFAIRS, EUROPEAN COMM'N, http://ec.europa.eu/economy_finance/assistance_eu_ms/index_en.htm (last updated Nov. 12, 2014) (explaining the forms of assistance available to Member States beginning in 2010).

23. See, e.g., Rachel Donadio, *Greeks Reach Deal on Austerity to Meet Condition of Bailout*, N.Y. TIMES, Feb. 9, 2012, <http://www.nytimes.com/2012/02/10/business/global/breakthrough-on-austerity-cuts-clears-way-for-greek-deal.html?pagewanted=all>; see also Valentina Pop, *EU Commissioner Defends Work of Bailout 'Troika'*, EU OBSERVER (Jan. 14, 2014, 9:30 AM), <https://euobserver.com/economic/122713> (describing "dramatic circumstances" of the 2010 crises in the bailouts, including allegations the troika "bullied" national governments).

24. See Jennifer Pietras, *Austerity Measures in the EU - - A Country by Country Table*, EUROPEAN INST., <http://www.europeaninstitute.org/beta/index.php/112-european-affairs/special-g-20-issue-on-financial-reform/1180-austerity-measures-in-the-eu> (last visited Feb. 6, 2015), for a detailed description of Member States' 2009 budget deficits and their planned austerity measures.

25. Ball, *supra* note 19; see also Alessi, *supra* note 21.

26. *French Protest Austerity Measures, EU Fiscal Pact*, EURACTIV (Oct. 1, 2012), <http://www.euractiv.com/euro-finance/french-protest-austerity-measure-news-515087>.

27. *Downward Spiral: Southern Europe Remains Stuck in Crisis*, SPIEGEL ONLINE INT'L (July 3, 2013), <http://www.spiegel.de/international/europe/efforts-to-halt-the-euro-crisis-ineffective-in-southern-europe-a-908856-3.html>.

leaders, under heated criticism at home, blamed outsiders for the austerity and the continued recession, especially denouncing the EU and Germany's EU leadership role in insisting on budget discipline.²⁸ Press reports amplified the misery caused by the EU-imposed austerity policies as the cause of the economic woes;²⁹ the EU's approval rating plummeted.³⁰

"The effect of this recession on support for the European integration project has been profound," as increased numbers of survey respondents expressed less trust in the EU and less confidence that EU membership was a good thing.³¹ The more severe impacts of the "extraordinary economic crisis in the EU" were expressed in Member States hit hardest by the recession; harsh austerity measures imposed by the EU and the IMF, a condition of the necessary financial bailouts, forced governments and parliaments to shrink welfare benefits and reduce market protection in their economies.³²

Thus, an anti-EU, anti-everything theme arose across Europe,³³ evidenced by the results in the May 2014 EU parliamentary elections:

Even though a big anti-European vote had been expected, the scale of it still came as a shock. In France Marine Le Pen's National Front (FN) came top with 25% of the vote. The UK Independence Party (UKIP) did better still, with 27%. Almost 40% of the vote in Greece went to broadly Eurosceptic or avowedly racist parties. As many as 30% of the seats in the next European Parliament will be held by anti-establishment and/or anti-European parties.

28. Heather Horn, *The New European Political Trend: Blame Germany*, ATLANTIC (May 4, 2012), <http://www.theatlantic.com/international/archive/2012/05/the-new-european-political-trend-blame-germany/256575/>.

29. See, e.g., *Austerity Plunges Europe into Recession*, VOX EUROPE (Feb. 15, 2013), <http://www.voxeurop.eu/en/content/press-review/3417111-austerity-plunges-europe-recession> (citing examples of news accounts from several newspapers).

30. Ian Traynor, *Crisis for Europe as Trust Hits Record Low*, GUARDIAN, Apr. 24, 2013, <http://www.theguardian.com/world/2013/apr/24/trust-eu-falls-record-low>.

31. Klaus Armingeon & Besir Ceka, *The Loss of Trust in the European Union During the Great Recession Since 2007: The Role of Heuristics from the National Political System*, 15 EUROPEAN UNION POL. 82, 83–85 (2014).

32. *Id.* ("While it is true that many Europeans blame the EU for all sorts of ills, if one digs deeper, one finds that a frustration with and a lack of basic political trust in national governments is at the root of this discontentment with the EU.")

33. Anti-EU, anti-Germany, anti-establishment, anti-immigration, anti-Islam, anti-Semitic, and in some cases pro-fascist. See *infra* for examples of all.

Manuel Valls, the French prime minister, was right to speak afterwards of a political “earthquake.”³⁴

The BBC concurred: “The European elections will be remembered as an “earthquake” which rocked the EU’s political establishment.”³⁵ Reuters spread the characterization,³⁶ and German sources used the term *Erdbeben* (“earthquake”) to the same effect.³⁷ *Financial Times* styled a headline: “Who will gain power in the EU’s post ‘earthquake’ world?”³⁸ While the mainstream, center-right and center-left, pro-EU parties maintained an overall majority, Eurosceptics were reported to have won some 200 seats in the 751-seat parliament.³⁹ After the elections, French President Francois Hollande commented that “policies of austerity in the eurozone since the outbreak of the global financial crisis in 2008 had damaged European integration.”⁴⁰

For those vast numbers of people, businesses, and governments bound together in the hugely significant political and economic bloc of the European Union, the reasonable, if not anxious, question to be posed is: How can the EU Parliament, a fully-empowered legislative institution after the Lisbon Treaty,

34. *Bucked Off*, ECONOMIST, May 31, 2014, <http://www.economist.com/news/leaders/21603000-europes-leaders-need-cut-power-brussels-many-areas-some-they-need-extend>; see, e.g., *Interview with Marine Le Pen: ‘I Don’t Want This European Soviet Union’*, SPIEGEL ONLINE INT’L (June 3, 2014), <http://www.spiegel.de/international/europe/interview-with-french-front-national-leader-marine-le-pen-a-972925.html>.

35. *European Elections: Ten Highlights*, *supra* note 4.

36. Luke Baker & Paul Taylor, *French Far Right in ‘Earthquake’ Win as Europe Votes*, REUTERS, May 25, 2014, available at <http://www.reuters.com/article/2014/05/25/us-eu-election-idUSBREA4N0DK20140525>.

37. *ECFR: Politisches Erdbeben in Europa*, EUROPÄISCHE BEWEGUNG DEUTSCHLAND (June 2, 2014), <http://www.netzwerk-ebd.de/news/ecfr-politisches-erdbeben-in-europa/>.

38. Peter Spiegel, *Who Will Gain Power in the EU’s Post ‘Earthquake’ World?*, FIN. TIMES, May 27, 2014, <http://www.ft.com/intl/cms/s/0/c124ee14-e583-11e3-8b90-00144feabdc0.html#axzz3AlajYOGp>.

39. The center-right Group of the European Peoples Party with 221 seats, and center-left Group of the Progressive Alliance of Socialists and Democrats with 191 seats, will keep a majority of the 751-member body with 412 seats. Eurosceptic or EU-critical groups include the European Conservatives and Reformists with 70 seats, the Alliance of Liberals and Democrats for Europe with 67 seats, the European United Left/Nordic Green Left with 52 seats, The Greens/European Free Alliance with 50 seats, the Europe for Freedom and Direct Democracy with 48 seats, and the Non-Attached group with 52 seats, as of the opening session on July 1, 2014, for 222 in those groups. The precise numbers may change as MEPs align or re-align among the political groups. See *Results of the 2014 European Election: 2014 Opening Session*, EUROPEAN PARLIAMENT, <http://www.europarl.europa.eu/elections2014-results/en/election-results-2014.html> (last visited Mar. 17, 2015); see also *Seats by Political Group and Member State*, EUROPEAN PARLIAMENT, <http://www.europarl.europa.eu/elections2014-results/en/seats-group-member-2014.html> (last visited Mar. 17, 2015).

40. *EU Leaders to ‘Digest’ Voter Rebuff in Brussels*, DEUTSCHE WELLE (May 27, 2014), <http://www.dw.de/eu-leaders-to-digest-voter-rebuff-in-brussels/a-17664622>.

deliberate and negotiate EU measures with such a sizeable number of boldly anti-EU voices and votes? The May 2014 elections have, at least for the present, induced a fundamental change in the dialogue of European governance:

The European Parliament, hitherto a bastion of European federalism, is set to become the beachhead for all sorts of anti-Europeans. The most strident have roughly doubled to about 100 out of 751 seats. More broadly anti-establishment parties control nearly one-third of the Parliament.”⁴¹

It is reasonable to expect that the “Eurooptimists” in the European Parliament will be challenged by the fresh new wave of “Eurosceptics.”⁴²

Those “Eurooptimists” still have the majority of votes, and they will hope for some evidence of economic recovery and some skilled leadership to resist the wave of anti-EU forces. The presence of radicals will bring a robust opposition to pro-EU legislation, which “will affect domestic politics in their home countries” and “constrain governments’ willingness to embark on European projects.”⁴³ This new political environment suggests a significant change in the discourse and political dynamics of ongoing European integration.

A. *The Election Results*

The actual vote counts in key Member States merited the attention it received. In France, a founding Member State of the original Community,⁴⁴ the right-wing *Front National* (FN) won its first national election ever, garnering twenty-four Members of European Parliament (MEPs).⁴⁵ The election debate in France was “dominated by the apostles of a reduced eurozone, opponents of globalization and an anti-American rhetoric on transatlantic treaty negotiations.”⁴⁶

Lightning also struck in the UK, where the right-wing, aggressively Eurosceptic UK Independence Party (UKIP) also led

41. *The Eurosceptic Union*, *supra* note 8; see also Wagstyl, *supra* note 8.

42. *What Does France’s Far-Right EU Poll Shocker Really Mean?*, FR. 24, <http://www.france24.com/en/20140526-france-eu-election-marine-le-pen-national-front/> (last updated May 26, 2014).

43. *The Eurosceptic Union*, *supra* note 8.

44. See JEAN MONNET, MEMOIRS 289 (1978), for a first-hand portrayal of France’s leadership in the founding of the first European Community.

45. *European Elections: Ten Highlights*, *supra* note 4.

46. *What Does France’s Far-Right EU Poll Shocker Really Mean?*, *supra* note 42.

the polls, gaining twenty-four seats and “making political history by breaking the Conservative-Labour duopoly in a national election.”⁴⁷ UKIP campaigned for an outright British exit from the EU and for tough curbs on immigration.⁴⁸ Significantly, soon after the election, UKIP leader Nigel Farage ruled out any alliance with FN’s Marine Le Pen.⁴⁹

In Denmark, the often strident, anti-immigration, anti-Islam *Dansk Folkeparti* (“People’s Party”) placed first with nearly 27% of the vote and four MEP seats;⁵⁰ its “lead candidate Morten Messerschmidt sealed the historic night by garnering the most personal votes in Danish history with over 400,000 votes.”⁵¹ Messerschmidt’s victory established the People’s Party as “the largest party in a national election for the first time, meaning that every four voters identified with his slogan ‘More Denmark, less EU’.”⁵²

The anti-EU votes came from both sides of the political spectrum. Forces from the political left in Greece and Spain finished with impressive results for new radical Eurosceptic parties. In another first for modern Greece’s electoral history, the leftist *Syriza* party (“Coalition of the Radical Left”) came in first with 26.6% of the vote, and earning six seats in the European Parliament.⁵³ *Syriza*’s leader, Alexis Tsipras, said, “[T]he current government has no political legitimacy to continue, and called for early general elections.”⁵⁴ Pointedly, he condemned

47. *European Elections: Ten Highlights*, *supra* note 4.

48. Bogdan Scurtu, *UKIP Wants “Brexit”*, GLOBAL STUD. J. (Nov. 5, 2013), <https://europoint.stonybrook.edu/blog/ukip-wants-brexit/>.

49. Laurence Dodds, *Nigel Farage: Ukip Won’t Unite with France’s Front National*, TELEGRAPH (May 27, 2014), <http://www.telegraph.co.uk/news/politics/nigel-farage/10858478/Nigel-Farage-Ukip-wont-unite-with-Frances-Front-National.html>.

50. *European Parliament Election Result – Denmark*, BURSON-MARSTELLER, <http://europedecides.eu/results/dk/> (last updated July 1, 2014); see also David Smith, *European Politics Dances to the Drum of the Far Right*, ECON. WATCH (Aug. 6, 2014), <http://www.economywatch.com/features/european-politics-dances-to-the-drum-of-the-far-right.06-08.html> (“The extremist, anti-Islam Danish Peoples Party . . . came [in] first . . .”).

51. Christian Wenande, *DF Wins Big in European Elections as Danes Vote in Favour of Patent Court*, COPENHAGEN POST, May 26, 2014, <http://cphpost.dk/news/df-wins-big-in-european-elections-as-danes-vote-in-favour-of-patent-court.9662.html>.

52. *A Fifth of All Votes Were for Messerschmidt*, COPENHAGEN POST, May 27, 2014, <http://cphpost.dk/news/a-fifth-of-all-votes-were-for-messerschmidt.9678.html>.

53. Marcus Bensasson & Nikos Chrysoloras, *Greece’s Syriza Wins EU Elections in Warning to Samaras*, BLOOMBERG (May 26, 2014), <http://www.bloomberg.com/news/print/2014-05-25/greece-s-syriza-leading-in-eu-elections-exit-poll-shows.html>.

54. Sarantis Michalopoulos, *Leftist Syriza Wins Greek EU Poll, Requests Early General Election*, EURACTIV (May 26, 2014), <http://www.euractiv.com/sections/eu-elections-2014/leftist-syriza-wins-greek-eu-poll-requests-early-general-election-302396>.

the EU/IMF bailout austerity conditions for Greece, and he demanded renegotiation of the Greek bailout measures.⁵⁵

The extreme right also made headlines in Greece, as the “nationalist Golden Dawn party, whose leader and five other lawmakers are in prison pending trial on charges of running a criminal organization, jumped to third place, with 9.4[%] of the vote, . . . [gaining] three seats.”⁵⁶ So now, a political party “whose symbol resembles the Swastika and whose leaders have publicly applauded Adolf Hitler” will participate in the European Parliament.⁵⁷

Likewise, in Spain, the success of the far left led “Spain’s two main parties, which have been taking turns in power since 1977, [to] their worst results in democratic history.”⁵⁸ The traditional center-right and left parties, which had received 81% of the vote in the last European Parliament elections in 2009, this time only received 49%.⁵⁹ While xenophobic and anti-EU parties did not prevail, several smaller parties won sufficient votes to place MEPs, based mainly on anti-government, anti-austerity feelings.⁶⁰

In Finland, Eurosceptics fared less well, but did gain seats in the new European Parliament. The traditional center-right and left National Coalition Party and the Centre Party each took three seats, as they had in the prior European election, but the “Eurosceptic True Finns Party won two seats and nearly 13% of the vote.”⁶¹ The True Finns, campaigning as a nationalistic and anti-EU party, doubled its MEPs from one seat to two, and the farther left, the Left Alliance and the Greens, each won a seat.⁶²

Swedish voters also punished the center-right government in power, giving two leftist parties, the Social Democrats (with 24.5%)

55. See *European Election Results: At a Glance*, BBC News (May 27, 2014), <http://www.bbc.com/news/world-europe-27575869>; Bensasson & Chrysoloras, *supra* note 53; see also Helena Smith, *Leftwing Syriza Party Triumphs in European Elections in Greece*, GUARDIAN, Aug. 25, 2014, <http://www.theguardian.com/politics/2014/may/26/syriza-european-elections-greece>.

56. Bensasson & Chrysoloras, *supra* note 53 (explaining that the conscious vote for extremists may be the most alarming aspect of this election).

57. Smith, *supra* note 55.

58. Carlos E. Cué, *Spain’s Two-Party System Dealt Major Blow in EU Elections*, EL PAÍS (May 26, 2014), http://elpais.com/elpais/2014/0526/inenglish/1401097098_896523.html.

59. Helena Spongenberg, *Spain’s Traditional Two-Party System in Disarray After EU Vote*, EU OBSERVER (May 27, 2014), <http://euobserver.com/eu-elections/124382>.

60. See Cué, *supra* note 58.

61. *European Election Results: At a Glance*, *supra* note 55.

62. Juhana Rossi, *Mainstream Parties Seen Holding Ground in Finland’s EU Poll*, WALL ST. J., May 25, 2014, <http://online.wsj.com/news/articles/SB10001424052702304811904579584291533385398>.

and the Environment Party (with 15.2%), almost 40% of the vote.⁶³ “[T]he Sweden Democrats won 9.7[%] of the vote, matching a surge across the region for parties opposed to immigration and skeptical toward the European Union.”⁶⁴

In Germany, anti-EU sentiment also found notable expression: The one-year-old Alternative for Germany (AfD) party got 7% of the vote, and seven seats in the Parliament, joining the European Conservatives and Reformists group.⁶⁵ AfD opposes the euro in its present form and claims not to be Eurosceptic, but even this milder form of anti-Brussels rhetoric marks a permanent change in Germany, where such talk has been taboo until now. “AfD . . . believes the euro is fundamentally flawed and says German taxpayers must not pay the bills for reckless governments or banks in other EU countries.”⁶⁶

Equally significant was the rise of additional far-right parties: to join Greece’s Golden Dawn, Germans also elected a “more or less openly neo-Nazi” candidate, Udo Voigt to the European Parliament, sitting with the Non-Aligned political group.⁶⁷ Voigt’s victory came in spite of years of debate about banning the neo-Nazi National Democratic Party of Germany (NPD), with some fearing that “a ban would only drive the membership underground.”⁶⁸ The NPD has been described by German intelligence as “racist, anti-Semitic and revisionist,” campaigning primarily on an anti-immigration election program.⁶⁹ Therefore, Germany contributed a nationalistic, far-right MEP and seven anti-euro MEPs to the discussion in the new Parliament.

63. Henriette Jacobsen, *Socialists Win by Landslide in Sweden as Voters Punish Governing Parties*, EURACTIV (May 26, 2014), <http://www.euractiv.com/sections/eu-elections-2014/socialists-win-landslide-sweden-voters-punish-governing-parties-302364>.

64. Johan Carlstrom & Niklas Magnusson, *Swedish Nationalists Rise as Influx of Syrian Refugees Grows*, BLOOMBERG (Aug. 21, 2014), <http://www.bloomberg.com/news/2014-08-20/swedish-nationalists-rise-as-record-immigration-stirs-backlash.html>.

65. A.K., *Germany Gets a Real Alternative*, ECONOMIST (May 26, 2014, 10:53 AM), <http://www.economist.com/blogs/charlemagne/2014/05/germanys-european-elections>; see also *European Election Results*, EUROPEAN PARLIAMENT, <http://www.europarl.europa.eu/elections2014-results/en/seats-member-state-absolut.html> (last visited Feb. 6, 2015) (listing MEP seats and political groups).

66. *European Elections: Ten Highlights*, *supra* note 4.

67. Cas Muddle, *The Far Right in the 2014 European Elections: Of Earthquakes, Cartels and Designer Fascists*, WASH. POST (May 30, 2014), <http://www.washingtonpost.com/blogs/monkey-cage/wp/2014/05/30/the-far-right-in-the-2014-european-elections-of-earthquakes-cartels-and-designer-fascists/>. See *European Election Results*, EUROPEAN PARLIAMENT, <http://www.results-elections2014.eu/en/country-results-de-2014.html> (last visited Feb. 6, 2015), for a full listing of the political groups at the opening session of the Parliament.

68. *European Elections: Ten Highlights*, *supra* note 4.

69. Michelle Martin, *German Party Accused of Neo-Nazi Traits Set for EU Parliament*, REUTERS, May 21, 2014, available at <http://www.reuters.com/article/2014/05/21/us-eu-election-germany-neonazis-idUSBREA4K0DY20140521>.

Meanwhile, mainstream parties solidified their support with the center-right CDU/CSU⁷⁰ gaining 35.3% of the vote and its junior coalition partner center-left Social Democrats increasing its share to 27.3%.⁷¹

More allegedly-neo-Nazi MEPs will join the Parliament from Hungary, where *Jobbik* secured three seats.⁷² *Jobbik*'s party leader characterized the result: the "success of [E]urosceptic, euro-realist parties throughout Europe also proves 'all of us would like to have a common Europe but something totally different from what is offered to us now.'" ⁷³ Overall, the conservative *Fidesz* party of Prime Minister Viktor Orban continued its electoral success, winning twelve seats, with just over 50% of the vote. The *Fidesz* MEPs joined the center right European Peoples Party (EPP) group, and the *Jobbik* MEPs sat with the Non-Aligned group.⁷⁴

In Austria, the right wing, anti-immigrant Freedom Party of Austria (FPÖ) took almost 20% of the vote and four seats in the Parliament, while the center-right and left carried the majority, each sending five MEPs to the new Parliament.⁷⁵

Italy brought starkly different news. The voters strongly supported the incumbent, moderate, center-left, and pro-EU government of Matteo Renzi's Democratic Party, with 41% of the vote,⁷⁶ even though Renzi criticized austerity measures. However, some anti-establishment dimension was at play, as he largely out-pollled the extremely critical, anti-establishment Five Star Movement of Beppe Grillo, which received just over 21%.⁷⁷ Renzi promised to restore a shared vision of Europe that needs reform.⁷⁸

70. CDU/CSU refers to the Christian Democratic Union along with its Bavarian branch, the Christian Social Union. *From Black to Orange: Spiegel Online's Guide to German Political Parties*, SPIEGEL ONLINE INT'L (Feb. 28, 2013), <http://www.spiegel.de/international/germany/guide-to-german-political-parties-a-886188.html>.

71. *European Election Results*, *supra* note 65.

72. *European Elections: Ten Highlights*, *supra* note 4.

73. *EP Elections - Fidesz Wins 12 Seats, Socialists Lick Wounds*, DAILY NEWS HUNG. (May 26, 2014), <http://dailynewshungary.com/ep-elections-fidesz-wins-12-seats-socialists-lick-wounds/>.

74. *European Election Results*, *supra* note 65.

75. *Id.*

76. J.H., *Non Vinciamo Noi*, ECONOMIST (May 26, 2014, 9:12 AM), <http://www.economist.com/blogs/charlemagne/2014/05/italys-european-elections>.

77. Elisabetta Povoledo, *Bucking E.U. Tide, Italians Endorse Prime Minister*, N.Y. TIMES, May 26, 2014, http://www.nytimes.com/2014/05/27/world/europe/voters-endorse-italian-prime-minister.html?_r=0.

78. *Id.*

In Ireland, in what its leader termed a “sea change” in Irish politics,⁷⁹ “*Sinn Fein*, the former political wing of the Irish Republican Army militant group and a *Syriza* ally, won three seats - one short of *Fine Gael*, the senior party in the ruling coalition. The leader of the Labour Party, the coalition's junior partner, announced he was resigning.”⁸⁰

In larger Poland, thirty-eight of the fifty-one MEP seats came from the political right-wing, “equally split between pro-EU and Eurosceptic forces.”⁸¹ The elections were dominated by two main parties: “Civic Platform (PO, *Platforma Obywatelska*), the senior ruling coalition partner of Prime Minister Donald Tusk, and Law and Justice (PiS, *Prawo i Sprawiedliwość*), the biggest opposition party, led by Jarosław Kaczyński.”⁸² The two parties have radically different views toward the EU: “PO is a member of the EPP, and as such is supportive of European institutions. PiS, on the other hand, is a member of the ECR and is opposed to deepening EU integration.”⁸³

In the other eastern Member States, apathy and domestic issues, less reflective of EU sentiment, dominated the election results.⁸⁴

B. Seven Political Groups and the Non-Aligned

“The exact political balance of the new Parliament depends on the formation of the political groups.”⁸⁵ The two largest groups at the opening session were the center-right and left mainstream groups: the European People’s Party (EPP) with 221 MEPs, and the Socialists and Democrats (S&D) with 191 MEPs.⁸⁶ Next came the activist European Conservatives and Reformists (ECR) group,

79. Ralph Reagel, *Election Results a 'Sea Change' for Irish Politics - Gerry Adams*, INDEPENDENT, May 26, 2014, <http://www.independent.ie/irish-news/elections/election-results-a-sea-change-for-irish-politics-gerry-adams-30305132.html>.

80. *European Election Results: At a Glance*, *supra* note 55.

81. *EU Vote Keeps Poland on the Right*, EURACTIV (May 27, 2014), <http://www.euractiv.com/sections/eu-elections-2014/eu-vote-keeps-poland-right-302428>.

82. *Id.*

83. *Id.*

84. Kerry Skyring, *Apathy Beats EU Antipathy in Eastern Europe*, DEUTSCHE WELLE (May 27, 2014), <http://www.dw.de/apathy-beats-eu-antipathy-in-eastern-europe/a-17664033>.

85. Oliver Hawkins et al., *European Parliament Elections 2014*, at 1 (House of Commons Library, Research Paper No. 14/32, 2014), available at www.parliament.uk/briefing-papers/rp14-32.pdf.

86. *Results of the 2014 European Election: 2014 Opening Session*, *supra* note 39.

entering the Parliament's initial plenum session with the third largest group, comprised of 70 MEPs.⁸⁷

In 2009, UK Prime Minister David Cameron had distanced himself from the EPP because of its Eurocentric views, and he and his allies broke away to found the new ECR group.⁸⁸ Following the May elections, the ECR, against Cameron's objection, voted to admit Germany's new anti-euro party, AfD (a rival of Merkel's conservative party), thus complicating Cameron's aspirations to engage Merkel in renegotiating the UK's relationship with the EU.⁸⁹ The Danish People's Party, the True Finns Party, and one member of the Dutch Reformed Political Party (SGP) were admitted to the ECR.⁹⁰ Overall, the ECR displayed wide support from several Member States.⁹¹ After the elections, ECR leader Syed Kamal boasted: "We are now the strongest group in the parliament arguing against the status quo: not for 'more Europe' and ever-closer union"⁹²

The third largest political group was the explicitly pro-EU Alliance for Liberals and Democrats for Europe (ALDE),⁹³ earning sixty-seven seats.⁹⁴ Just behind ALDE, the socially and political liberal, anti-TTIP, European United Left/Nordic Green Left (GUE/NGL) group (which supports a reformed EU⁹⁵) came aboard with fifty-two seats.⁹⁶

The Non-Affiliated group of fifty-two MEPs, led by Le Pen's twenty-three from France, included five from Greece and Italy, four from Austria, Italy, the Netherlands, and Portugal, three from

87. *Id.* The ECR won twenty seats in the UK, nineteen in Poland, eight in Germany, four in Belgium and Denmark, two in Bulgaria, Czech Republic, Netherlands, Slovakia, and Finland, and one in Ireland, Greece, Croatia, Latvia, and Lithuania.

88. Leigh Phillips, *UK Tories Confirm They Are to Leave the EPP*, EU OBSERVER (Mar. 12, 2009), <http://euobserver.com/news/27762>. See Philip Lynch & Richard Whitaker, *A Loveless Marriage: The Conservatives and the European People's Party*, 61 PARLIAMENTARY AFF. 31, 31 (2008), for an in-depth analysis of the decision to start another political group.

89. *Anti-Euro Party Joins Conservative Group of MEPs*, BBC NEWS (June 12, 2014), <http://www.bbc.com/news/uk-politics-27822203>.

90. *Dutch MEP Joins Conservatives, Farage in Trouble*, EURACTIV (June 17, 2014), <http://www.euractiv.com/sections/eu-elections-2014/dutch-mep-joins-conservatives-farage-trouble-302835>. See *infra* text accompanying note 104, for information on the re-organization of the EFD group.

91. *Seats by Political Group and Member State*, *supra* note 39.

92. Syed Kamal, *The Conservatives in the European Parliament Are Going from Strength to Strength*, HUFFINGTON POST (July 23, 2014), http://www.huffingtonpost.co.uk/syed-kamall/european-parliament_b_5612432.html.

93. *See About the ALDE Party*, ALLIANCE OF LIBERALS & DEMOCRATS FOR EUR. PARTY, <http://www.aldeparty.eu/en/about/the-alde-party> (last visited Mar. 17, 2015).

94. *Results of the 2014 European Election: 2014 Opening Session*, *supra* note 39.

95. *GUE/NGL-Backed Study Shatters TTIP Myths!*, GUE/NGL, <http://www.guengl.eu/policy/action/ttip-a-threat-to-democracy-and-public-interest> (last visited Mar. 17, 2014).

96. *Results of the 2014 European Election: 2014 Opening Session*, *supra* note 39.

Hungary, two from Germany, and one from Belgium.⁹⁷ Relations became uneasy when Le Pen tried to establish an official political group in the EU Parliament, to advance her “fiercely anti-EU and anti-immigrant policies,”⁹⁸ but she had become toxic to some due to previous anti-Semitic comments by her father, who founded FN.⁹⁹ A member of Le Pen’s group belatedly switched to Farage’s EFD group,¹⁰⁰ while Farage accused the FN of being anti-Semitic.¹⁰¹

Farage himself was forced to re-form his group, along with Italian anti-establishment Five Star Movement leader Giuseppe Grillo, and other like-minded Eurosceptics,¹⁰² comprising forty-eight MEPs.¹⁰³ The EFD group was reformed in June 2014 with MEPs from existing member parties UK Independence Party (twenty-four MEPS) and Order and Justice, in addition to new affiliates the Five Star Movement (seventeen), and other smaller Eurosceptic parties.¹⁰⁴

Next came the socially, culturally, and environmentally progressive, anti-TTIP, Greens/the European Free Alliance,¹⁰⁵ with fifty members.¹⁰⁶

97. *Seats by Political Group and Member State*, *supra* note 39; see also Cécile Barbière, *Eurosceptics Make Controversial Return to EU Parliament*, EURACTIV (July 2, 2014), <http://www.euractiv.com/sections/eu-elections-2014/eurosceptics-make-controversial-return-eu-parliament-303242>.

98. Hugh Carnegy & Alex Barker, *Le Pen Fails to Form EU Political Group*, FIN. TIMES, June 24, 2014, <http://www.ft.com/intl/cms/s/0/24800b38-fbb4-11e3-ad9b-00144feab7de.html#axzz3APGJdjcR>.

99. *French National Front Can't Shake Off 'Embarrassing' Le Pen Senior*, FR. 24 (June 9, 2014), <http://www.france24.com/en/20140609-french-national-front-can-shake-off-embarrassing-le-pen/>.

100. *Le Pen Candidate Joins Farage's New EFD Group*, EURACTIV (June 18, 2014), <http://www.euractiv.com/sections/eu-elections-2014/le-pen-candidate-joins-farages-new-efd-group-302906>.

101. Carnegy & Barker, *supra* note 99.

102. *Le Pen Candidate Joins Farage's New EFD Group*, *supra* note 101; see also *Charter*, EUROPE OF FREEDOM & DIRECT DEMOCRACY, <http://www.efdgroup.eu/about-us/our-charter> (last visited Mar. 17, 2015) (containing eurosceptic rhetoric).

103. *Europe of Freedom and Direct Democracy, Farage's New Group in the EU Parliament*, EURACTIV (June 25, 2014), <http://www.euractiv.com/video/europe-freedom-and-direct-democracy-farages-new-group-eu-parliament-50920> (reporting the results of the 2014 European elections by political group and Member State: twenty-four MEPs from the UK, seventeen MEPs from Italy, two from Lithuania and Sweden, and one each from Czech Republic, France, and Latvia).

104. *Le Pen Candidate Joins Farage's New EFD Group*, *supra* note 101; see also *Seats by Political Group and Member State*, *supra* note 39.

105. *Who We Are*, THE GREENS/EUROPEAN FREE ALLIANCE, <http://www.greens-efa.eu/about-us/48-who-we-are.html> (last visited Feb. 6, 2015); see TTIP: BEWARE WHAT LIES BENEATH, <http://ttip2014.eu/home.html> (last visited Feb. 6, 2015) (containing a background illustrated with the image of water armed with explosive mines submerged just below the surface, maintained by the Greens-EFA political group).

106. *European Elections 2014*, *supra* note 1.

*C. The European Parliament's Post-Lisbon Treaty
Power Alters the EU's Institutional Politics
and Presents an Existential Opportunity*

The emerging, uncertain political environment in the new European Parliament has special significance. Following the Parliament's acquisition of enhanced powers through the Lisbon Treaty, it is now a more powerful political force (especially in international trade decisions) than ever in the history of the evolving EU.¹⁰⁷ For example, the President and members of the Commission (the huge institution that proposes, administers, and enforces EU legislation¹⁰⁸) are chosen according to the new process set forth in the somewhat ambiguous language of the Lisbon TEU Art. 17(7):

Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission. This candidate shall be elected by the European Parliament by a majority of its component members.

The Council, by common accord with the President-elect, shall adopt the list of the other persons whom it proposes for appointment as members of the Commission. . . .

The President, the High Representative of the Union for Foreign Affairs and Security Policy and the other members of the Commission shall be subject as a body to a vote of consent by the European Parliament. On the

107. *EP After the Lisbon Treaty: Bigger Role in Shaping Europe*, EUROPEAN PARLIAMENT, <http://www.europarl.europa.eu/aboutparliament/en/0042423726/The-Lisbon-Treaty.html> (general description of all Lisbon changes to the EP's powers); see also Laura Richardson, *The Post-Lisbon Role of the European Parliament in the EU's Common Commercial Policy: Implications for Bilateral Trade Negotiations* 5 (Coll. of Eur., EU Diplomacy Paper 5/2012, 2012), available at https://www.coleurope.eu/system/files_force/research-paper/edp_5_2012_richardson.pdf?download=1 ("The EP is now endowed with the 'hard power' of consent in the ratification phase of FTAs, acting as a threat to strengthen its 'soft power' to influence negotiations.").

108. *European Commission at Work*, EUROPEAN COMM'N, http://ec.europa.eu/atwork/index_en.htm (last visited Feb. 6, 2015).

basis of this consent the Commission shall be appointed by the European Council, acting by a qualified majority.¹⁰⁹

Thus, the appointment of the President and members of the Commission, as well as the High Representative for Foreign Affairs, require the Parliament's approval. And the European Council must "take into account" the elections of the Parliament.¹¹⁰

These Lisbon Treaty amendments to the EU's institutional balance, among others, were aimed as a further step in democratizing the EU.¹¹¹ Each represents a significant evolution in the relationship between the European Council and the Parliament,¹¹² with obvious potential to raise tensions. The European Council traditionally selected the Commission President by consensus, with the European Parliament rubber-stamping the decision.¹¹³ In requiring the Parliament's more active participation in the Commission President's selection, as well as in other key decisions of EU governance (such as the approval of trade agreements), the new Parliament is in a position to exert its authority in its relationship with the other EU institutions, in particular with the Member State leaders in the European Council and the Council of Ministers.¹¹⁴

This newly elected Parliament wasted no time in asserting the institution's enhanced prerogatives;¹¹⁵ immediately after the May elections, as Member State leaders began discussions about the appointment of the next Commission President, Parliamentary leaders provoked "Europe's most bitter dispute since the height of the eurozone crisis."¹¹⁶ *Der Spiegel* exposed the details: just hours after the close of the elections, in a pre-dawn meeting, the leaders of two leading political groups (the EPP's Jean Claude Juncker

109. Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community art. 17(7), Dec. 13, 2007, 2007 O.J. (C 306) 1 [hereinafter Treaty of Lisbon] (emphasis added).

110. *See id.*

111. Juan Mayoral, *Democratic Improvements in the European Union Under the Lisbon Treaty: Institutional Changes Regarding Democratic Government in the EU*, EUROPEAN UNION DEMOCRACY OBSERVATORY 1 (Feb. 2011), <http://www.eui.eu/Projects/EUDO-Institutions/Documents/EUDOREport922011.pdf>.

112. Christine Reh, *A Bad Day for Europe?*, UNIV. COLL. LONDON (July 3, 2014), <http://www.ucl.ac.uk/european-institute/highlights/2013-14/juncker>.

113. Charlemagne, *supra* note 9.

114. *See, e.g.*, Editorial, *The Democratic Deficit: Europeans Vote, Merkel Decides*, SPIEGEL ONLINE INT'L (June 2, 2014), <http://www.spiegel.de/international/germany/power-struggle-europts-between-european-parliament-and-eu-leaders-a-972870.html>.

115. *Id.*

116. Peter Spiegel, *Q&A: The Fight over Jean-Claude Juncker and Why It Matters*, FIN. TIMES, June 20, 2014, <http://www.ft.com/intl/cms/s/2/fe0fbd52-f7c0-11e3-b2cf-00144feabdc0.html#axzz3Bn0VhDFq>.

and the S&D's Martin Schulz) agreed to work together as a grand coalition in the Parliament and to support Juncker (whose EPP group had received the most votes) as the Parliament's candidate for Commission President.¹¹⁷

The heads of the other political groups joined the agreement for Juncker later that day, and a letter was delivered to European Council President Van Rompuy, asserting that consultation with the Parliament was intended to determine the next Commission President and endorsing the Juncker's candidacy.¹¹⁸ The next day, at a conference of EPP conservatives, Merkel received this clear challenge to the European Council's previous monopoly of authority over choosing this leader behind closed doors poorly, labeling the intrusion a "declaration of war."¹¹⁹ Also present at the meeting, fellow conservative Juncker and Merkel argued publicly and unpleasantly over the Parliament's letter, as well as over who had the authority to set the new Commission's agenda for the next five years.¹²⁰ At the end of the meeting, the conservative leaders agreed to support Juncker and acknowledged the Parliament's letter.¹²¹

Later that evening, the European Council met and their discussion began. Many Social Democratic national leaders supported Juncker, while Prime Ministers David Cameron (UK), Viktor Orban (Hungary), and Mark Rutte (The Netherlands) disagreed, especially as to allowing the Parliament to establish a precedent that its leading candidates should have such priority.¹²²

The next day, Cameron launched a vehement campaign against Juncker, objecting to the way he was chosen as well as to his suitability for the job; this ultimately forced "an unprecedented vote at an EU summit to dramatise his opposition."¹²³ Cameron began telephoning other leaders, warning them not to be strong-armed or "railroaded" by the Parliament.¹²⁴ He explained that

117. *The Democratic Deficit: Europeans Vote, Merkel Decides*, *supra* note 114.

118. *Id.*

119. Derek Scally, *Backing for Juncker 'Declaration of War on EU Leaders'*, *Says Merkel*, IRISH TIMES, June 2, 2014, <http://www.irishtimes.com/news/world/backing-for-juncker-declaration-of-war-on-eu-leaders-says-merkel-1.1817017>.

120. Spiegel, *supra* note 116.

121. *Id.*

122. *No 10 Says Cameron Has Secured EU Vote over Juncker*, BBC NEWS (June 23, 2014), <http://www.bbc.com/news/uk-politics-27973091>.

123. *Juncker Nominated as European Commission President*, FR. 24 (June 28, 2014), <http://www.france24.com/en/20140627-europe-juncker-nominated-european-commission-president/> (stating that Cameron was outvoted 26-2, as only Hungary's Viktor Orban joined the opposition).

124. William James, *UK's Cameron to EU Leaders: Don't Be Railroaded by European Parliament*, REUTERS, May 27, 2014, available at <http://www.reuters.com/article/2014/05/27/us-eu-elections-summit-britain-idUSKBN0E71FS20140527>.

“many leaders have deep misgivings about ‘a power grab through the backdoor’ when the Parliament began demanding the appointment of its candidate for the Commission Presidency.”¹²⁵ Cameron challenged Merkel publicly:

First, he directly challenged her by placing a strongly-worded article in a number of European newspapers, including in Germany, driving home his campaign to stop federalist Jean-Claude Juncker becoming Commission president, and repeating his claim that it was an undemocratic stitch-up. Then he failed to stop his own group in the Brussels parliament, the European Conservatives and Reformists (ECR), admitting German Eurosceptics opposed to Merkel's Christian Democrats.¹²⁶

While advocates for both the Parliament's and the European Council's position in the contest were accusing each other of an attempted coup,¹²⁷ the contest of wills ended abruptly. By the end of the week, Merkel announced her support for Juncker; some say this was in response to strong pressure from the German media to follow the democratic expression of the voters in the Parliamentary elections.¹²⁸ Merkel announced that she approved of the change in the selection procedure, saying there would be no drama if the majority chose Juncker.¹²⁹ At the final Council meeting, Juncker was overwhelmingly approved.¹³⁰

Juncker's acceptance by the European Council marks “a new shift in the balance of power in the EU capital, to the European Parliament's gain.”¹³¹ It had been predicted that the “outcome of

125. George Parker, *Cameron Appeals for 'Courage' in Opposition to Juncker*, FIN. TIMES, June 12, 2014, <http://www.ft.com/intl/cms/s/0/31d1a75e-f256-11e3-ac7a-00144feabdc0.html?siteedition=intl#axzz34X5Xt4Dw>.

126. Nick Assinder, *Cameron's EU Chaos: Fresh Clashes with Merkel over Jean-Claude Juncker as Tory MEPs Go Rogue*, INT'L BUS. TIMES, June 13, 2014, <http://www.ibtimes.co.uk/camerons-eu-chaos-fresh-clashes-merkel-over-jean-claude-juncker-tory-meps-go-rogue-1452540>.

127. Roberto Baldoli et al., *Overthrowing Secrecy: The Spitzenkandidaten Experiment and a New Chance for a European Party System*, CTR. FOR EUROPEAN POLICY STUDIES 1 (Aug. 4, 2014), <http://www.ceps.be/book/overthrowing-secrecy-spitzenkandidaten-experiment-and-new-chance-european-party-system>.

128. Scally, *supra* note 119.

129. *Merkel: No Drama over Juncker EC President Vote*, BBC NEWS (June 25, 2014), <http://www.bbc.com/news/uk-politics-27993773>.

130. R. Daniel Kelemen, *Can Jean-Claude Juncker Save the Union and Prevent a Brexit?*, FOREIGN AFF. (June 30, 2014), <http://www.foreignaffairs.com/articles/141609/r-daniel-kelemen/president-for-the-people>.

131. Honor Mahony, *Juncker Chosen for EU Commission Job, Cameron Defeated*, EU OBSERVER (June 27, 2014), <http://euobserver.com/eu-elections/124790>; *see id.* (stating that following approval by the full Parliament, Juncker's selection marks the first time in the

this power struggle will likely set a precedent for the balance among the European institutions,”¹³² and it did. This victory for the Parliament has more significance because some commentators and others believe the European Council has dominated the governance of the EU in recent years, especially since the arrival of the Eurozone crisis when the national leaders dictated much of the EU reaction.¹³³ In addition, the Parliament was accused of ensuring the Council’s primacy by selecting the least charismatic candidates for the Commission presidency.¹³⁴ The Commission president has been perceived as a servant of the national leaders who comprise the European Council.¹³⁵ Christine Lagarde, President of the IMF, reportedly declined to be considered for the Commission presidency because that position was “just a vastly overpaid servant of the heads of state and government who make up the European Council.”¹³⁶

One European political expert asserted that the EU has not elected a truly strong Commission president who could hold sway over the national leaders for some twenty years, and “this seems unlikely to change: ‘At the end of the day, it will be the leaders of the big European countries that will do the backroom deals.’”¹³⁷

history of the European Union that this post was not the European Council’s prerogative, which would likely strengthen this process in the next EU elections).

132. Paul Taylor, *EU Election: ‘This Time It’s Different’, or Maybe Not*, REUTERS, May 25, 2014, available at <http://www.reuters.com/article/2014/05/25/us-eu-election-president-analysis-idUSBREA4002120140525>.

133. Charles Grant, *What is Wrong with the European Commission?*, EURACTIV (June 27, 2013), <http://www.euractiv.com/future-eu/wrong-european-commission-analysis-528937>; see also Konstantin Tsapogas - von Taube, *Who Runs Europe?*, NEWS EUR. ONLINE (May 24, 2014), <http://www.neurope.eu/article/who-runs-europe> (blaming national governments for leading the EU to decline).

134. Pietro De Matteis, *EU Faces Prospect of ‘Coup d’Etat’ by European Council*, PARLIAMENT MAG. (June 5, 2014), <https://www.theparliamentmagazine.eu/articles/news/eu-faces-prospect-coup-d-etat-european-council>.

135. Taylor, *supra* note 132 (stating that the Parliament’s assertiveness “is partly a reaction to perceptions that Barroso, a former Portuguese prime minister, has acted too much as the obedient servant of the big member states, notably Germany and France, over the last decade”).

136. M.E. Synon, *Lagarde in Smart Move Turns Down Top EU Job*, BREITBART (June 7, 2014), <http://www.breitbart.com/Breitbart-London/2014/06/07/Lagarde-in-smart-move-turns-down-top-EU-job>; see also *id.* (“In recent years, with the dominance of German Chancellor Merkel, who likes to do deals in negotiations with one or two other key EU leaders, what Brussels calls ‘intergovernmentalism’ has been on the rise, cutting out the commission altogether.”).

137. Judy Dempsey, *Do the European Parliamentary Elections Matter?*, CARNEGIE EUR. (May 22, 2014), <http://carnegieeurope.eu/2014/05/23/do-european-parliamentary-elections-matter/hbgq> (stating that victories for extreme parties in the EU elections could produce a parliament with “a shrilled anti-American tone, more skepticism regarding the Transatlantic Trade and Investment Partnership (TTIP), and a more restrictive policy with regard to immigrant and human rights”).

The change in the decisionmaking process is a deep one, as this new institutional balance affects the appointment over the ensuing months of the full tableau of EU leadership, from the remaining members of the Commission and their portfolios, to the President of the European Council, and the High Representative for Foreign Affairs and Security Policy. So, the entire leadership and direction of the EU for the five-year term of the Parliament and the Commission¹³⁸ now must reflect the Parliament's new authority.

And this Parliament must approve trade agreements.

D. Existential Issues at Play

Does this post-Lisbon Parliament's assertion of authority constitute a "historical turning point" in European democracy, as this *Der Spiegel* editorial claims?

The EU cannot allow itself to be blackmailed by the British for another three years and refuse to give the people of Europe what was assured to them before the election—that they could use their vote to determine the next president of the European Commission. If the EU doesn't fulfill that promise, it will lose all credibility and acceptance.

.....

Britain is important to be sure. But the choice between a more democratic EU and Britain's continued membership is clear. Europe must choose democracy.¹³⁹

Parliament's President, Martin Schulz, repeated the same characterization of the confirmation of Juncker as a "historic day for European democracy."¹⁴⁰ German Foreign Minister Frank-Walter Steinmeyer proclaimed, "[f]or the first time, European citizens have had a direct influence on the appointment of the EU top job – and they successfully asserted their choice."¹⁴¹

138. Treaty of Lisbon arts. 14(3), 17(3).

139. Editorial, *Britain Must Choose Now If It Will Stay in Europe*, SPIEGEL ONLINE INT'L (June 3, 2014), <http://www.spiegel.de/international/europe/spiegel-editorial-argues-britain-must-determine-future-in-eu-a-972903.html>.

140. *Berlin Optimistic Following Juncker Victory*, EURACTIV (July 17, 2014), <http://www.euractiv.com/sections/eu-elections-2014/optimism-prevails-berlin-following-juncker-victory-303523>.

141. *Id.* See Eri Bertsou, *The 2014 European Elections: A Victory for European Democracy?* (London Sch. of Econ. & Political Sci., LEQS Paper No. 78/2014, 2014), <http://www.lse.ac.uk/europeanInstitute/LEQS/LEQSPaper78.pdf>, for a timely scholarly assessment of the election.

Transitioning the European Council's previous unilateral power to name the Commission President behind closed doors, even if only toward the messy process just witnessed, must surely constitute a move toward more democratic process in the EU. Only time will tell how far this progress will go; however, there is no doubt that an emboldened European Parliament will speak out on the controversial TTIP trade agreement negotiations.

III. THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP AGREEMENT(TTIP)

The U.S. Trade Representative (USTR) and the European Commission's Directorate-General for Trade promote the TTIP as "an ambitious, comprehensive, and high-standard trade and investment agreement"¹⁴² designed to "generat[e] jobs and growth across the EU."¹⁴³ The trade agreement negotiations are perceived as an opportunity to create a unique, "comprehensive trade and investment agreement,"¹⁴⁴ which would focus on market access issues (i.e., tariffs, services, investment protection and public procurement), while also addressing certain regulatory issues and non-tariff barriers; such an agreement would also encompass a variety of global trading issues regarding intellectual property rights, environment, labor, and other common issues related to trade and competitiveness across borders.¹⁴⁵

Overall, the European Commission has estimated "that TTIP would be worth an extra €100 billion to the bloc's struggling economy—equivalent to 0.5[%] of GDP—and create the largest single free-trade zone in the world."¹⁴⁶ This anticipated expansion

142. *Transatlantic Trade and Investment Partnership*, OFFICE OF THE U.S. TRADE REP., <http://www.ustr.gov/ttip> (last visited Feb. 6, 2015).

143. *About TTIP*, DIRECTORATE-GEN. FOR TRADE, EUROPEAN COMM'N, <http://ec.europa.eu/trade/policy/in-focus/ttip/about-ttip/> (last updated Feb. 12, 2015).

144. U.S.-EUROPEAN UNION HIGH LEVEL WORKING GRP. ON JOBS & GROWTH, FINAL REPORT HIGH LEVEL WORKING GROUP ON JOBS AND GROWTH 1 (2013) [hereinafter HLWG FINAL REPORT].

145. Howard Davies, *Transatlantic Trade and Investment Partnership (TTIP) EUA Background Paper, January 2014*, EUROPEAN UNIV. ASS'N 2, http://www.eua.be/Libraries/Higher_Education/TTIP_background_paper_jan_2014.sflb.ashx (last visited Feb. 6, 2015) ("TTIP is perceived by both sides as a powerful stimulus package. EU-commissioned research indicates that a successful partnership could benefit the EU economy by EUR 120 billion – and the US and world economies to a slightly lesser extent. Average EU-US tariff barriers now stand at 3%. Removing them would create a huge single market. Negotiations will focus on how to eliminate unnecessary red tape, align or mutually recognise product standards (the so-called non-tariff barriers, or NTB's), particularly in the automotive, pharmaceutical and medical device sectors, and create a transatlantic procurement space.")

146. Benjamin Fox, *From Trade Tariffs to Trust – TTIP a Year on*, EU OBSERVER (July 28, 2014, 10:14 AM), <http://euobserver.com/economic/125070>.

is expected to allow substantial job growth and to encourage EU innovation.¹⁴⁷ U.S. lead negotiator Dan Mullaney commented that TTIP was aimed at reducing unnecessary costs arising from different regulations and standards on both sides of the Atlantic, while at the same time maintaining “high levels of protection for consumers, for health and safety, for the environment, and for labor rights.”¹⁴⁸

The general idea of TTIP is to link the huge markets of the EU and the U.S. While the U.S. comprises some 316 million relatively prosperous consumers,¹⁴⁹ the even larger, mostly open markets of the EU boast 505 million consumers across twenty-eight Member States.¹⁵⁰ By further lowering barriers to trade between the two blocs, a partnership of this magnitude could, according to one analysis, yield €119 billion of economic gains per year for the EU, and €95 billion per year for the U.S., with gains to disposable income across European households of €545 per family, and €655 per family in the U.S.¹⁵¹

Beyond direct economic benefits in the EU and the U.S., and especially important in today’s conflicted trading world, the EU and U.S. also seek to use TTIP commitments on the global scene to advance broader trade liberalization, set rules and standards, and address challenges associated with the rising economic powers.¹⁵²

147. *Accessing Markets*, DIRECTORATE-GEN. FOR TRADE, EUROPEAN COMM’N, <http://ec.europa.eu/trade/policy/accessing-markets/> (last updated Oct. 2, 2014).

148. Dan Mullaney (U.S. T-TIP Chief Negotiator) & Ignacio Garcia-Bercero (EU T-TIP Chief Negotiator), Opening Remarks by U.S. and EU Chief Negotiators for T-TIP Round Seven Press Conference (Oct. 3, 2014), *available at* <https://ustr.gov/about-us/policy-offices/press-office/speeches/2014/October/Opening-Remarks-by-US-and-EU-Chief-Negotiators-for-TTIP-Round-Seven-Press-Conference>.

149. *See United States*, WORLD BANK, <http://data.worldbank.org/country/united-states> (last visited Feb. 6, 2015) (population as of 2013); *United States Trade Summary 2012 Data*, WORLD BANK, <http://wits.worldbank.org/CountryProfile/Country/USA/Year/2012/Summary> (last visited Feb. 6, 2015) (outlining the US’s prosperity related to trade, export and import). According to the OECD Better Life Initiative, “[i]n the United States, the average household net-adjusted disposable income per capita is 39 531 USD a year, more than the OECD average of 23 938 USD a year.” *United States*, OECD BETTER LIFE INDEX, <http://www.oecdbetterlifeindex.org/countries/united-states/> (last visited Feb. 6, 2015).

150. *See Living in the EU*, EUROPEAN UNION, http://europa.eu/about-eu/facts-figures/living/index_en.htm (last visited Feb. 6, 2015) (EU-28 population as of 2013); *European Union Trade Summary 2012 Data*, WORLD BANK, <http://wits.worldbank.org/CountryProfile/Country/EUN/Year/2012/Summary> (last visited Feb. 6, 2015) (outlining the EU’s prosperity related to trade, export and import with third countries).

151. JOSEPH FRANCOIS ET AL., CTR. FOR ECON. POLICY RESEARCH, REDUCING TRANSATLANTIC BARRIERS TO TRADE AND INVESTMENT: AN ECONOMIC ASSESSMENT 47 (2013), *available at* http://trade.ec.europa.eu/doclib/docs/2013/march/tradoc_150737.pdf.

152. SHAYERAH ILIAS AKHTAR & VIVIAN C. JONES, CONG. RESEARCH SERV., R43158, PROPOSED TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP (T-TIP): IN BRIEF 1 (2014).

A. Historical Context

In 2011, the Transatlantic Economic Council announced the launching of the EU-U.S. “High-Level Working Group on Jobs and Growth” (HLWG) to assess whether the EU and U.S. could find common ground on which to bolster their economic relationship.¹⁵³ In February 2013, it issued its final report, recommending “that the United States and the EU launch . . . negotiations on a comprehensive, ambitious agreement that addresses a broad range of bilateral trade and investment issues, including regulatory issues, and [which] contributes to the development of global rules.”¹⁵⁴ With that recommendation, U.S. President Barack Obama, European Council President Herman Van Rompuy, and European Commission President José Manuel Barroso announced they intended to launch negotiations immediately.¹⁵⁵

Less than one month later, the European Commission had transmitted a proposal to the Council of Ministers to acquire the necessary authority and guidelines to begin negotiations.¹⁵⁶ Subsequently, the Council directed the Commission to begin negotiations with the U.S., and the negotiating teams began the process almost immediately, officially negotiating as of June 14, 2013.¹⁵⁷

Since then, the negotiation talks have continued every few weeks.¹⁵⁸ When launching the negotiations, the EU and U.S. hoped

153. *EU and US Boost Economic Partnership*, DIRECTORATE-GEN. FOR TRADE, EUROPEAN COMM’N (Nov. 29, 2011), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=757>.

154. HLWG FINAL REPORT, *supra* note 144, at 6.

155. Press Release, Office of the U.S. Trade Rep., U.S., EU Announce Decision to Launch Negotiations on a Transatlantic Trade and Investment Partnership (Feb. 13, 2013), available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2013/february/statement-US-EU-Presidents>; see also Press Release, European Comm’n, Statement from United States President Barack Obama, European Council President Herman Van Rompuy and European Commission President José Manuel Barroso (Feb. 13, 2013), available at http://europa.eu/rapid/press-release_MEMO-13-94_en.htm; *European Union and United States to Launch Negotiations for a Transatlantic Trade and Investment Partnership*, DIRECTORATE-GEN. FOR TRADE, EUROPEAN COMM’N (Feb. 13, 2013), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=869>.

156. *European Commission Fires Starting Gun for EU-US Trade Talks*, DIRECTORATE-GEN. FOR TRADE, EUROPEAN COMM’N (Mar. 12, 2013), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=877>.

157. *Transatlantic Trade and Investment Partnership: Commissioner Karel De Gucht Welcomes Member States’ Green Light to Start Negotiations*, DIRECTORATE-GEN. FOR TRADE, EUROPEAN COMM’N (June 14, 2013), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=917>.

158. *The Transatlantic Trade and Investment Partnership (TTIP): TTIP Explained*, DIRECTORATE-GEN. FOR TRADE, EUROPEAN COMM’N (May 8, 2013), http://trade.ec.europa.eu/doclib/docs/2014/may/tradoc_152462.pdf.

for a final agreement by the end of 2014.¹⁵⁹ Despite negotiations every four to five weeks, 2014 ended and numerous issues remained unresolved. With a hefty break in negotiations between November 2014 and February 2015, the end-of-2014 target date was not met.¹⁶⁰

The negotiations are organized by trade topic and sector. The topics can be broken down into three main categories: (1) Market Access, (2) a Regulatory Component, and (3) Rules, Principles, and Modes of Cooperation.¹⁶¹ Chief Negotiators Ignacio Garcia Bercero and Dan Mullaney oversee twenty-four specialized negotiation groups, manned with approximately 150 negotiators, focused on facilitating “the opening of the market for agricultural products, energy and raw materials, competition, services, public procurement, customs and trade facilitation, rules of origin, veterinary and phytosanitary measures.”¹⁶² The negotiating groups meet one to two days during each round, and some seventy business and consumer groups make presentations in four stakeholder groups that comment on issues relevant to the topics.¹⁶³

Throughout the negotiations the Commission is obliged to meet repeatedly with both Parliament and Council representatives to keep them informed.¹⁶⁴ Similarly, the Commission promotes

159. James Crisp, *EU Gives up on TTIP for US Reinsurance Reform*, EURACTIV (Aug. 26, 2014, 5:19 PM), <http://www.euractiv.com/sections/euro-finance/eu-gives-ttip-us-reinsurance-reform-307982>.

160. The ninth round of negotiations is scheduled for April 2015. Additional and updated information on TTIP can be found on the European Commission’s dedicated TTIP website, <http://ec.europa.eu/trade/policy/in-focus/ttip/>.

161. Moreover, each category has a number of sub-categories and sub-sub-categories, all of which are important to the particular category up for negotiation. *State of Play of TTIP Negotiations After the 6th Round*, DIRECTORATE-GEN. FOR TRADE, EUROPEAN COMM’N (July 29, 2014), http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152699.pdf.

162. Press Release, Council of the European Union, Lithuania Welcomes the Beginning of the EU-U.S. Trade Talks (July 8, 2013, 5:52 PM), available at <http://www.eu2013.lt/en/news/pressreleases/lithuania-welcomes-the-beginning-of-the-eu-us-trade-talks->. The hope of many stakeholders is that the increase in revenue and trade in certain sectors will ensure a successful agreement, including “metal products (exports up 12%), processed foods (+9%), chemicals (+9%), other manufactured goods (+6%), other transport equipment (+6%), and especially in motor vehicles (41%).” *Transatlantic Trade and Investment Partnership: The Economic Analysis Explained*, DIRECTORATE-GEN. FOR TRADE, EUROPEAN COMM’N (Sept. 2013), http://trade.ec.europa.eu/doclib/docs/2013/september/tradoc_151787.pdf.

163. Fox, *supra* note 146.

164. *The Transatlantic Trade and Investment Partnership (TTIP): TTIP Explained*, *supra* note 158.

extensive consultation with the public.¹⁶⁵ Likewise, the USTR consults extensively with the Congress and the public.¹⁶⁶

B. Progress

With the conclusion of the eighth round of negotiations in February 2015, the EU and the U.S. are said to have moved closer on the majority of topics, including textiles, chemicals, pharmaceuticals, cosmetics, medical devices, cars, pesticides, food and agriculture, and more.¹⁶⁷ Summaries are brief, allowing for transparency, thus, it is difficult to accurately ascertain the detailed progress. The opposition voices continue their efforts to oppose or shape the agreement.

Key divisive issues, discussed *infra*, have not gone away: Investor-State Dispute Settlement (ISDS) may remain the most difficult topic on both sides of the Atlantic,¹⁶⁸ but the standard litany of objections continue unabated that TTIP will lower consumer protection and food safety standards and will eliminate many jobs.¹⁶⁹

Transparency poses an especially sensitive issue. While the EU and the U.S. submit general position papers through the negotiating teams prior to each round, consumers and the media criticize the lack of transparency in the process.¹⁷⁰ For some, the failure to provide open access to every document related to the

165. *Towards an EU-US Trade Deal: Making Trade Work for You*, DIRECTORATE-GEN. FOR TRADE, EUROPEAN COMM'N (Mar. 28, 2014), http://trade.ec.europa.eu/doclib/docs/2014/march/tradoc_152276.pdf.

166. *See, e.g.*, Michael Froman, U.S. Trade Ambassador, Remarks by Ambassador Michael Froman: "Dialogue on the Transatlantic Trade and Investment Partnership" (Oct. 14, 2014), available at <https://ustr.gov/about-us/policy-offices/press-office/speeches/2014/October/Remarks-by-Ambassador-Michael-Froman-Dialogue-on-the-TTIP>.

167. The seventh round focused primarily on the Regulatory Component. *EU-US Trade – 7th Round of Talks on Transatlantic Trade Pact Ends in the US*, DIRECTORATE-GEN. FOR TRADE, EUROPEAN COMM'N (Oct. 3, 2014), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1158> (statement by EU's Chief TTIP Negotiator, Ignacio Garcia-Bercero).

168. Michael Knigge, *TTIP Draws Flak from Local Leaders in Europe and the US*, DEUTSCHE WELLE (Sept. 25, 2014), <http://www.dw.de/ttip-draws-flak-from-local-leaders-in-europe-and-the-us/a-17955321>. In fact, as of the February 2015 negotiations, ISDS remained off the agenda. *See Report of the Eighth Round of Negotiations for the Transatlantic Trade and Investment Partnership (Brussels, 1 – 6 February 2015)*, EUROPEAN COMM'N (Mar. 5, 2015), http://trade.ec.europa.eu/doclib/docs/2015/february/tradoc_153175.pdf.

169. *US and EU 'Make Progress' in Free Trade Area Talks*, BBC NEWS (Oct. 3, 2014), <http://www.bbc.com/news/business-29482892>.

170. As a response, the European Commission publishes regular information related to the negotiations. *See Ensuring Transparency in EU-US Trade Talks: EU Publishes Negotiating Positions in Five More Areas*, DIRECTORATE-GEN. FOR TRADE, EUROPEAN COMM'N (May 14, 2014), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1076> (stating that regular reporting is "part of our efforts to be fully transparent about the negotiations").

negotiations evidences a conspiracy or intentional lowering of standards, encouraging complaints that TTIP will encourage “dangerous deregulation.”¹⁷¹ The EU and the U.S. have always maintained that certain pertinent documents should be kept in confidence; the understanding has been that the documents will be available after negotiations are complete, because to release them prematurely could hurt the negotiation process.¹⁷²

To respond to the complaints, EU and U.S. authorities have set up special websites to combat the claims of lack of transparency. The U.S. Diplomatic Mission to Germany, for instance, created a “T-TIP Myths and T-TIP Realities” page to address concerns about transparency.¹⁷³

In the EU, websites with information have been erected as reading rooms from the Commission,¹⁷⁴ while in the U.S., documents are available through the USTR office.¹⁷⁵ For now, consumers, industry, players and the media can find information in press releases, speeches, and stakeholder debriefings, which provide a stream of information on the status of the negotiations.¹⁷⁶

171. *See Transatlantic Trade Talks: NGO Decries Industry Efforts to Weaken Chemicals Regulation*, EUROPEAN TRADE UNION INST. (July 27, 2013), <http://www.etui.org/Topics/Health-Safety/News/Transatlantic-trade-talks-NGO-decries-industry-efforts-to-weaken-chemicals-regulation>; Naa-Okailey Annan, *Toxic Trade Deal: Friends of the Earth Decries Industry Efforts to Weaken Regulation of Chemicals Associated with Breast Cancer, Autism, Infertility*, FRIENDS OF THE EARTH (July 24, 2013), <http://www.foe.org/news/archives/2013-07-toxic-trade-deal-friends-of-the-earth-decries-indust>; see also Letter from Emily O'Reilly, European Ombudsman, to Uwe Corsepius, Sec'y-Gen., Council of the European Union, Requesting an Opinion in the European Ombudsman's Own-Initiative Inquiry OI/11/2014/MMN Concerning Transparency and Public Participation in Relation to the Transatlantic Trade and Investment Partnership (TTIP) Negotiations (July 29, 2014), available at <http://www.ombudsman.europa.eu/cases/correspondence.faces/en/54634/html.bookmark> (noting that the EU negotiating directives had not been published, nor had the Council approved any requests for public access).

172. Letter from Ignacio Garcia-Bercero, Directorate-Gen. for Trade, European Comm'n, to L. Daniel Mullaney, Assistant U.S. Trade Rep. for Eur. & the Middle E., Chief U.S. Negotiator for TTIP, Regarding Arrangements on TTIP Negotiating Documents (July 5, 2013), available at http://trade.ec.europa.eu/doclib/docs/2013/july/tradoc_151621.pdf.

173. *T-TIP Myths and T-TIP Realities*, U.S. DIPLOMATIC MISSION TO GER., <http://germany.usembassy.gov/ttip/> (last visited Feb. 6, 2015).

174. *Id.*

175. *U.S. Objectives, U.S. Benefits in the Transatlantic Trade and Investment Partnership: A Detailed View*, OFFICE OF THE U.S. TRADE REP., <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2014/March/US-Objectives-US-Benefits-In-the-TTIP-a-Detailed-View> (last visited Feb. 6, 2015) (“We have heard from the American public their request for an elaboration of the information we have provided about what we are working to achieve through trade negotiations, so we will continue to share information through the press, social media, and www.USTR.gov as we move forward in the negotiations.”).

176. For up-to-date information from the European Commission and the Office of the US Trade Representative, visit *The Transatlantic Trade Investment Partnership*, DIRECTORATE-GEN. FOR TRADE, EUROPEAN COMM'N, <http://ec.europa.eu/trade/policy/in->

A massive volume of TTIP material has been made available on the Commission's website (over 120,000 downloads of 50 documents in less than a year).¹⁷⁷ The July 2014 negotiations ended with a commitment by the European Commission to regularly update a new document, termed a "State of Play."¹⁷⁸ The State of Play reports are to serve as a one-stop-shop for a public and succinct summary of positions and procedural statuses of each topic.¹⁷⁹ Further, in August of 2014, Commissioner De Gucht and the Italian Presidency called on the Member States again "for declassification of the negotiating directives which EU Council gave to the Commission [for] TTIP . . . to further improve [the] transparency efforts."¹⁸⁰ And in response to building pressure, the Council of the European Union released the negotiating mandates, making them public on October 9, 2014.¹⁸¹

However, not much is public regarding the actual progress of the negotiations, other than the general press conference remarks of the negotiators at the end of each session. At the conclusion of the seventh round of negotiations in October 2014, general progress was noted by Mullaney: the negotiators were able to discuss more than half of the voluminous and complex proposals on harmonization in services; they further discussed regulatory coherence in technical regulations and food safety regulations, addressed the promotion of import and export for small and medium sized enterprises by reducing red tape and taxes at the border, and agreed on the exclusion of the privatization of public services and chemical regulatory regimes in the agreement.¹⁸² Garcia-Bercero agreed that the negotiations had been productive, noting that in most areas, texts are on the table; in some areas, consolidated texts that outline the two sides' proposals are available.¹⁸³ He specifically identified ongoing

focus/ttip/ (last visited Mar. 17, 2015), and *Transatlantic Trade and Investment Partnership (T-TIP)*, OFFICE OF THE U.S. TRADE REP., <http://www.ustr.gov/ttip> (last visited Mar. 17, 2015).

177. *Towards an EU-US Trade Deal: Making Trade Work for You*, *supra* note 165.

178. See *European Elections 2014*, *supra* note 1; *State of Play of TTIP Negotiations After the 6th Round*, *supra* note 161.

179. *Ensuring Transparency in EU-US Trade Talks: EU Publishes Negotiating Positions in Five More Areas*, *supra* note 170.

180. *Commission and Italian Presidency Ask Member States to Publish the Negotiating Objectives*, DIRECTORATE-GEN. FOR TRADE, EUROPEAN COMM'N (Aug. 26, 2014), <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1150>.

181. Council Directive 11103/13, *Directives for the Negotiation on the Transatlantic Trade and Investment Partnership between the European Union and the United States of America* (June 17, 2013), available at <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf> (declassified on Oct. 9, 2014).

182. Mullaney & Garcia-Bercero, *supra* note 148.

183. *Id.*

discussions on technical standards, conformity assessment, sanitary and phytosanitary measures, and concrete work on pharmaceuticals, cars, chemicals, and engineering, as well as regulatory coherence in energy, raw materials, customs and trade facilitation, and intellectual property.¹⁸⁴ He offered assurances that nothing will be done that would lower or endanger the “protection of the environment, health, safety, consumers, data privacy”¹⁸⁵

Similarly, successful results were achieved in the February 2015 negotiations on such topics as tariffs, agriculture, trade in goods, services, public procurement, sanitary and phytosanitary issues, regulatory coherence, technical barriers to trade, cars, chemicals, pharmaceuticals, medical devices, cosmetics, textiles, ICT, engineering and pesticides to sustainable development, energy and raw materials, customs and trade facilitation, intellectual property rights, geographical indicators, small and medium-sized enterprises, rules of origin, and dispute settlement.¹⁸⁶

Such complex negotiations will take considerably more time to advance.

IV. POST-ELECTION PROSPECTS FOR TTIP

The TTIP negotiations will advance only as far as the political leaders on both sides allow. How far the two sides are willing to go, and what concessions they are willing to make, is less clear than when leaders expressed their optimism in Northern Ireland at the launch of the negotiations in 2013.¹⁸⁷ The 2014 MEP elections reflect the harsh political reality of governance on a continent that has suffered a serious and prolonged economic downturn.¹⁸⁸

The “political earthquake,” whether exaggerated or not, has and will continue to inhibit the political courage of European leaders, including their willingness to resist popular opposition to the trade liberalization agreement. At the same time, the U.S. Congress maintains its reticence to grant the U.S. Executive trade

184. *Id.*

185. *Id.*

186. *Report of the Eighth Round of Negotiations for the Transatlantic Trade and Investment Partnership (Brussels, 1 – 6 February 2015)*, *supra* note 168.

187. *See, e.g., Remarks by President Obama, U.K. Prime Minister Cameron, European Commission President Barroso, and European Council President Van Rompuy on the Transatlantic Trade and Investment Partnership*, THE WHITE HOUSE (June 17, 2013), <http://www.whitehouse.gov/the-press-office/2013/06/17/remarks-president-obama-uk-prime-minister-cameron-european-commission-pr>.

188. *See supra* Part III.

promotion authority.¹⁸⁹ Thus, a TTIP as ambitious as originally planned seems unlikely, and the risk that no agreement at all will be reached looms.

At least one incontrovertible fact shapes the functioning of the European Parliament for its next five-year term: more than two hundred dissatisfied MEPs (including numerous Eurosceptics, a few xenophobes, and two outright fascists) have joined the legislative body where they gain a platform and funding to express their contrary views.¹⁹⁰ From this, an incontrovertible political canon shapes the leadership from the national politicians: they pay attention to “political earthquakes.”

The voters’ message appears to have gotten through. Barely a month after the elections, President of the European Council Herman Van Rompuy circulated a draft memo to national leaders outlining a strategy for the EU: to “limit its ambitions over the next five years and not take on policy issues that can better be handled by individual member states . . . , [warning] that ‘public disenchantment’ with Brussels has spread and urg[ing] the EU’s next leaders to be more focused.”¹⁹¹ This cautionary pronouncement from the president of the national leaders in their European Council configuration suggests the pressing question: to what extent will this new EU Parliament and European Council permit the EU negotiators to agree to meaningful concessions in return for reciprocal concessions from the United States?

Unfortunately, many do not appreciate the economic and political terrain on which the Europeans, in particular, are navigating to gain approval of a meaningful trade deal. The relationship between the EU and its twenty-eight Member States (in both institutions and legal doctrine) is complex; while EU countries adamantly remain sovereign, together, they have introduced the world to a new legal model of governance for

189. Robert B. Zoellick, *A Presidency of Missed Opportunities*, WALL ST. J., Aug. 10, 2014, <http://online.wsj.com/articles/robert-zoellick-a-presidency-of-missed-opportunities-1407709833>.

190. McManus & Rosemberg, *supra* note 7 (“[T]he [E]urosceptics, xenophobes and even outright fascists about to sit in parliament and win EU funding, along with radical left groups, will gain a platform for their views as well as scope to slow down the assembly’s legislative process.”).

191. Peter Spiegel, *Herman Van Rompuy Urges EU to Do Less*, FIN. TIMES, June 23, 2014, <http://www.ft.com/intl/cms/s/0/65b9f7f6-fad5-11e3-8993-00144feab7de.html#axzz35Yz2NCil> (stating that the memo was seen as an attempt to placate dissatisfied Cameron, supporting several of his positions, including his endorsement of a trade deal with the U.S.).

over fifty years.¹⁹² They have pooled certain aspects of their sovereignty to cure their previously balkanized markets and of course to avoid another world war.¹⁹³ In this, they succeeded: most barriers to trade among the Member States are reduced,¹⁹⁴ and the 2012 Nobel Peace Prize was awarded to the EU, which “for over six decades contributed to the advancement of peace and reconciliation, democracy and human rights in Europe.”¹⁹⁵

Some academics like to think of the EU as a precursor of a new model in today’s globalized world—diminishing emphasis on military power, and relying more on economic power—a form of “Commercial Realpolitik.”¹⁹⁶ This quasi-federal collaboration has been largely successful in Europe; however, as evidenced in the May 2014 Parliamentary elections, it is controversial, as centralization has naturally moved power toward Brussels and away from traditional local sources.

Yet, to agree to a trade deal, the European Commission must take its negotiation framework instructions from not only the Council, whose members represent the EU national governments, but from the European Parliament, whose members represent the people of Europe, and, throughout the negotiations, both the Council and the Parliament must be kept informed.¹⁹⁷ In the end, both the Council and the Parliament must agree to the text.¹⁹⁸

192. See, e.g., Ben Rosamond, *Conceptualizing the EU Model of Governance in World Politics*, 10 EUROPEAN FOREIGN AFF. REV. 463, 463–64 (2005) (“The EU . . . represent[s] either a remarkable experiment in post-national governance or a stunning instance of interstate cooperation and concomitant institutionalization.”).

193. See, e.g., DELEGATION OF THE EUROPEAN UNION TO THE U.S., A GUIDE FOR AMERICANS: THE EUROPEAN UNION 2 (2013), available at http://www.euintheus.org/wp-content/uploads/2012/12/GUIDE_UPDATE_2013_DECEMBER_HIGH_RES.pdf (“The economic integration that would lead to today’s European Union was launched in the wake of World War II, as a devastated Western Europe sought to rebuild its economy.”).

194. *The Single Market Act*, EUROPA.EU, http://ec.europa.eu/growth/single-market/smact/index_en.htm#maincontentSec3 (last visited Apr. 5, 2015); see also *Internal Market: General Framework*, EUROPA.EU, http://europa.eu/legislation_summaries/internal_market/internal_market_general_framework/index_en.htm (last visited Feb. 6, 2015).

195. *The Nobel Peace Prize 2012*, NOBELPRIZE.ORG, http://www.nobelprize.org/nobel_prizes/peace/laureates/2012/ (last visited Feb. 6, 2014). See Herman Van Rompuy, President of the European Council, Remarks Accepting the Nobel Prize (Dec. 10, 2012), available at <https://www.youtube.com/watch?v=Y4hyyqOuY0>, for an insightful retelling of the purpose of European integration.

196. E.g., Rawi Abdelai, *The Profits of Power: Commercial Realpolitik in Europe and Eurasia*, 20 REV. INT’L POL. ECON. 421 (2013).

197. A special Council committee supervises the negotiation progress. Consolidated Version of the Treaty on the Functioning of the European Union art. 207, May 9, 2008, 2008 O.J. (C 115) 47 [hereinafter TFEU].

198. TFEU arts. 207, 218; see also *How EU Trade Policy Is Made*, DIRECTORATE-GEN. FOR TRADE, EUROPEAN COMM’N, <http://ec.europa.eu/trade/policy/policy-making/> (last visited Feb. 28, 2015).

Thus, two major EU institutions that are sensitive to political forces must agree on any major trade deal—a formidable threshold.

A. Pre-Election Controversy over TTIP

The TTIP was the subject of widespread controversy during the EU Parliamentary election campaigns.¹⁹⁹ “Rarely have trade negotiations attracted as much attention and criticism as the Transatlantic Trade and Investment Partnership (TTIP) has over the last year.”²⁰⁰ As time goes on, it becomes clearer that “[f]rom Germany to Greece there is growing hostility to the [TTIP] . . . which is uniting far-left and far-right parties”²⁰¹ Both anti-TTIP and mainstream media sources reported that, in May, protests against the TTIP were staged in Brussels, Berlin, Paris, and many other large cities across Europe.²⁰² Opposition groups actively promoted demonstrations in the week leading up to the May elections, entitled *European Days of Action May 15 – 25, 2014*.²⁰³

199. Andreas Noll, *New European Parliament Has No Time to Waste*, DEUTSCHE WELLE (May 25, 2014), <http://www.dw.de/new-european-parliament-has-no-time-to-waste/a-17660238>; *Green MEP Joins Anti-TTIP Campaigners in Brighton*, KEITH TAYLOR MEP (July 12, 2014), <http://www.keithtaylormep.org.uk/2014/07/12/green-mep-joins-anti-ttip-campaigners-in-brighton/> (“[TTIP] has caused widespread controversy, not least because the deal could hand unprecedented powers to corporate investors at the expense of governments in the EU and US.”); see also *One Week in Europe: Migration, TTIP and Election Countdown*, EURANETPLUS (May 24, 2014), <http://euranetplus-inside.eu/one-week-in-europe-migration-ttip-and-election-countdown/> (stating that migration and TTIP are two controversial issues).

200. Pieter de Pous et al., *An Election to Determine the Future of EU-US Trade*, EUROPEAN VOICE (May 21, 2014, 8:00 PM), <http://www.europeanvoice.com/other-voices/an-election-to-determine-the-future-of-eu-us-trade/>.

201. Robin Emmott, *Drum Protest as EU Denounces ‘Lies’ About Planned U.S. Trade Pact*, REUTERS, May 15, 2014, available at <http://www.reuters.com/article/2014/05/15/eu-usa-trade-idUSL6N0013TA20140515> (“European farmers, unions and nationalist politicians are trying to sway an uncertain public against the plans, despite studies showing an accord could increase economic growth.”).

202. *Hundreds of Protesters Arrested in Brussels as Business Leaders Debate ‘Maintaining Citizen’s Trust’* EURACTIV (May 16, 2014, 2:40 PM), <http://www.euractiv.com/sections/european-business-summit-2014/hundreds-protesters-arrested-brussels-business-leaders-debate>; *France Celebrates “European Day of Alternatives” and Protest Against TTIP Decrying EC Corruption*, ACE NEWS SERVICE (May 19, 2014), <http://www.bilaterals.org/?france-celebrates-european-day-of>.

203. See, e.g., Jennifer Baker, *240 Arrested During TTIP Protest Blocking the European Business Summit*, REVOLUTION NEWS (May 15, 2014), <http://revolution-news.com/240-arrested-ttip-protest-blocking-european-business-summit/> (“We are social movement activists, altermondialists, migrants, precarious and industry workers, party members and unionists and many more, who want to connect our struggles and powers beyond nation-state lines. During the week before the elections for the European Parliament we call for the spirit of the multitude of these social movements to build real democracy from below. We call for an international week of decentralised actions from May 15-25, 2014. Be part of it!”).

On Saturday, May 17, about 1,500 protesters gathered in Paris to celebrate the European Day of Alternatives and Resistance and to protest against TTIP.²⁰⁴ On the following Friday, just as the elections were beginning in some countries, a thousand people were in the streets of Helsinki to demonstrate against TTIP.²⁰⁵

Simultaneously, some four hundred farmers, trade unionists and others rallied outside the Brussels venue of the European Business Summit meeting of European business and political leaders to protest against TTIP, culminating in the arrest of 250 demonstrators.²⁰⁶ Thus, many organizations and coalitions of groups are working to raise awareness and opposition to trade agreements, including the World Alliance Against TPP & TTIP,²⁰⁷ a collaboration of individuals and organizations, and STOP TTIP,²⁰⁸ an alliance of around 150 left-wing groups.²⁰⁹ Friends of the Earth, a like-minded global organization, expressed similar themes.²¹⁰ Another group, Blockupy Europe, which organized the European Days of Action, expressed typical anti-free-trade concerns in a press release, substantiating the concerns over austerity measures:

Solidarity beyond Borders – Building Democracy from Below was the motto for a May of Solidarity and Action Days just before the European elections. Launched by the transnational European coordination of and for Blockupy it was a powerful moment of Europe-wide mobilization and solidarity. Thousands of people throughout the continent – in Germany, Poland, Italy, France, Belgium, Spain, Austria, Greece and Portugal – took to the streets and demonstrated against austerity policies pushed by the

204. *France Celebrates "European Day of Alternatives" and Protest Against TTIP Decrying EC Corruption*, *supra* note 202.

205. Press Release, Bilaterals.org, Finnish Media Ignores Successful Anti-TTIP Demonstration (May 28, 2014), <http://www.bilaterals.org/?finnish-media-ignores-successful>.

206. *250 Arrested in Anti-TTIP Protest at European Business Summit*, EURACTIV (May 16, 2014, 10:00 AM), <http://www.euractiv.com/video/250-arrested-anti-ttip-protest-european-business-summit-307626>.

207. For details regarding the Trans Pacific Partnership, see *Trans-Pacific Partnership (TPP)*, OFFICE OF THE U.S. TRADE REP., <http://www.ustr.gov/tp> (last visited Mar. 16, 2015).

208. See the groups' websites at WAATT (WORLD ALLIANCE AGAINST TTP & TTIP), <https://www.facebook.com/waatt.org> (last visited Mar. 16, 2015); STOP TTIP <http://stopttip.net/> (last visited Mar. 16, 2015).

209. *Alliance Formed to Stop EU-US Free Trade Deal*, EU OBSERVER (July 16, 2014, 8:53 AM), <http://euobserver.com/tickers/124993>.

210. See Adrian Bebb, *EU-US Trade Deal: Slicing and Dicing Food Safety*, FRIENDS OF THE EARTH EUR. (Aug. 28, 2014), <http://www.foeeurope.org/eu-us-trade-deal-slicing-dicing-food-safety-280714> (warning that TTIP could undermine food safety in Europe).

Troika and the EU, . . . as well as . . . *further neoliberal trade agreements such as TTIP furthering global capitalism.*²¹¹

Workers' groups were a part of the action. In the lead-up to election week, representatives of the European Trade Union Confederation and the U.S.-based American Federation of Labor – Congress of Industrial Organizations met in Berlin and issued their list of demands; they sought to influence any trade agreement that may be reached, aiming to give workers better protection than previous deals, which they complained served mainly to increase corporate profits.²¹² Others agreed: in March 2014, protesters expressed opposition to TTIP outside the European Commission DG TRADE building in Brussels, with speakers from the U.S. Teamsters union, the president of the MOC Belgian Trade Union, and EU and U.S. farmers.²¹³ In that same week in March, trade unions in Belgium and Germany made clear their opposition to TTIP, with one union leader, Detlef Wetzel, describing the agreement as “dangerous.”²¹⁴

The day the elections began in some Member States, *Deutsche Welle* published one of its “Top Stories” with an opening sentence proclaiming that “[t]he TTIP trade agreement between the US and the EU is continuing to cause a major row in Europe.”²¹⁵ The article then synopsized an interview with an economist who characterized the negotiations as (1) largely reflecting the interests of major corporations, (2) giving corporations the power to force national governments into mandatory arbitration tribunals if the

211. *Statement: May of Solidarity Sent a Message Across Europe*, BLOCKUPY EUR. (May 30, 2014), <http://mayofsolidarity.org/2014/05/statement-may-of-solidarity-sent-a-message-across-europe/> (emphasis added).

212. *TTIP Must Work for the People, or It Won't Work at All*, EUR. TRADE UNION CONFEDERATION (May 21, 2014), <http://www.etuc.org/press/ttip-must-work-people-or-it-won%E2%80%99t-work-all#.VQehRY54rHl>; see also *ETUC Position on the Transatlantic Trade and Investment Partnership*, EUR. TRADE UNION CONFEDERATION (Apr. 25, 2013), <http://www.etuc.org/documents/etuc-position-transatlantic-trade-and-investment-partnership#.VAo70PldXYY> (stating that a year ago, ETUC had issued its litany of concerns about TTIP, from labor rights, to consumer protection, to agriculture).

213. *More Trade Unions Oppose TTIP*, KEEP OUR NHS PUBLIC, <http://keepournhspublicoxfordshire.org.uk/the-eu-us-free-trade-agreement/more-trade-unions-oppose-ttip/> (last visited Mar. 16, 2015).

214. *Id.*; see also *Trade Unions*, WORKER-PARTICIPATION.EU, <http://www.worker-participation.eu/National-Industrial-Relations/Countries/Belgium/Trade-Unions> (last visited Mar. 16, 2015) (stating that the Confederation of Christian Trade Unions of Belgium (ACV/CSC) and General Labor Federation of Belgium (ABVV/FGTB) have over three million members).

215. Jennifer Fraczek, *'TTIP Serves the Major Corporations'*, DEUTSCHE WELLE (May 23, 2014), <http://www.dw.de/ttip-serves-the-major-corporations/a-17655221> (interview with economist Christophe Scherrer of the University of Kassel, Germany).

countries pass laws that burden trade the corporations deem harmful to their investments,²¹⁶ (3) potentially weakening data privacy, (4) lowering health and consumer standards in general, and (5) noting the paucity of consultation with consumers' and workers' groups.²¹⁷ These anti-TTIP themes continued to be raised through and after the election.

While five hundred protesters attempted to surround the EU Trade offices on May 15, top trade leaders from both the EU and the U.S. were trying to rebut the anti-trade opponents, expressing harsh criticism of much of the anti-TTIP discourse and accusing leftist groups and NGOs of taking advantage of social media to invent and spread falsehoods about the negotiations.²¹⁸ EU Commissioner De Gucht specifically criticized MEP electioneering for coloring the TTIP debate: "You should not underestimate that this is now all mixed up with the European elections. . . . This has now been taken over by . . . part[s] of the left side of the political spectrum . . . who see in fact the TTIP as a topic to be discussed . . . and beaten in the European elections."²¹⁹ De Gucht also pointedly faulted the soon-to-be-reelected European Parliament President, Martin Schulz, for suggesting that trade negotiations should be suspended because of the elections.²²⁰ Other protesters retorted that De Gucht's remarks improperly demonized people expressing genuine concerns and revealed how uncomfortable he was with full and open public debate on trade matters.²²¹

Recently, the criticism took a more concrete form with stronger, quasi-legal action. In July 2014, an alliance of the trade opposition organizations submitted a formal request to the European Commission to institute procedures for a European Citizens' Initiative (ECI).²²² The ECI, a Lisbon Treaty innovation, enables EU citizens to petition the Commission for a review of a

216. For the European Commission's description of the ISDS, see *Factsheet on Investor-State Dispute Settlement*, DIRECTORATE-GEN. FOR TRADE, EUROPEAN COMM'N (Oct. 3, 2013), trade.ec.europa.eu/doclib/docs/2013/october/tradoc_151791.pdf.

217. Fraczek, *supra* note 215.

218. Emmott, *supra* note 201.

219. *EU-US Clash over Financial Services in TTIP*, EURACTIV (May 15, 2014, 5:46 PM), <http://www.euractiv.com/sections/european-business-summit-2014/eu-us-clash-over-financial-services-ttip-302173>.

220. *Id.*

221. James Crisp, *De Gucht, NGOs, Trade Accusations After Anti-TTIP Protestors 'Kettled' by Police*, EURACTIV (May 19, 2014, 4:18 PM), <http://www.euractiv.com/sections/eu-priorities-2020/de-gucht-ngos-trade-accusations-after-anti-ttip-protestors-kettled>.

222. Press Release, Fair Trade Advocacy Office, European Citizens' Initiative Demands: Stop Negotiations for TTIP and CETA (July 15, 2014), *available at* <http://www.fairtrade-advocacy.org/ftao-publications/press-releases/press-release-2014/747-european-citizens-initiative-demands-stop-negotiations-for-ttip-and-ceta>.

policy and conduct a hearing in the European Parliament.²²³ In June, just after the EU elections, NGO Democracy International announced over one hundred organizations from seventeen Member States supported the initiative.²²⁴

The Commission summarily rejected the request in September, stating a proposal cannot be lodged to stop negotiations in progress.²²⁵ However, the rejection will likely only further energize the focused opposition, and TTIP may find itself on the inevitable road to the Court of Justice of the European Union regardless.

B. The Accusations against TTIP

Opposition to TTIP and the TPP trade agreements is typically expressed in a common litany of fears: Trade agreements emphasize rules that promote corporate interests, while threatening national sovereignty, democratic principles, public services, environmental protection, food safety, consumer safety, and the loss of jobs.²²⁶ Representative of these was an assessment published less than a month before the EU elections by the Austrian Foundation for Development Research, which foresaw some limited economic gains that might be achieved in spite of substantial risks of negative side effects.²²⁷ The study predicted TTIP harmonisations would threaten consumer safety, public health, and environmental safety, as well as increased unemployment, added costs for employee retraining, revenue loss during periods of market adjustments, and other costs.²²⁸

223. Dave Keating, *EU Rejects Citizens' Petition Against US Trade Deal*, EUROPEAN VOICE (Sept. 11, 2014, 7:06 PM), <http://www.europeanvoice.com/article/eu-rejects-citizens-petition-against-us-trade-deal/>. Treaty of Lisbon art. 11(4) and TFEU art. 24 empower the Commission and the Parliament to adopt provisions to implement this new technique for citizens to express their opinions regarding EU issues. In February 2011, these institutions adopted a Regulation establishing the procedures for such an initiative to the Commission. Regulation (EU) No. 211/2011 of the European Parliament and of the Council of February 16, 2011 on the Citizens' Initiative, 2011 O.J. (L 65) 1.

224. *ECI Against TTIP and CETA to Start Soon*, DEMOCRACY INT'L (June 24, 2014), <https://www.democracy-international.org/eci-against-ttip-and-ceta-start-soon>.

225. Keating, *supra* note 223.

226. *See, e.g., TTIP Trade Deal Is a Corporate Power Grab, That Must Be Stopped*, GREEN PARTY (July 11, 2014), <http://greenparty.org.uk/news/2014/07/11/green-party-ttip-trade-deal-is-a-corporate-power-grab,-that-must-be-stopped/>.

227. WERNER RAZA ET AL., AUSTRIAN FOUND. FOR DEV. RESEARCH, *ASSESS TTIP: ASSESSING THE CLAIMED BENEFITS OF THE TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP (TTIP)*, at iv (2014). The study was commissioned and financed by the European Parliament's GUE/NGL political group.

228. *Id.*

The GUE/NGL EU parliamentary group naturally heralded the Austrian study, emphasizing the threat to consumer and environmental safety and public health, predicting many EU export products would not be able to compete with cheaper U.S. alternatives.²²⁹ The Secretary General of a Belgian trade union, Felipe Van Keirsbilck, elaborated the issues:

Our demand is to stop the negotiation of TTIP . . . which is a project for the sake of multinationals and very rich people. There is in the project of the Transatlantic Partnership something called ISDS (Investor to State Dispute Settlement). This means that a multinational that feels that its possible profits will be decreased by some social or ecological laws can sue a state [in] a private court and make the state pay very huge fines.

. . . .

A free trade area between Europe and the US will destroy jobs and social protection, environmental rights.²³⁰

The more controversial allegations about the trade deal liberalizations include “Frankenfoods,”²³¹ the use of chlorine wash in cleaning chickens,²³² and the ISDS process. The first two topics center on “fears that strict European standards will be weakened, providing the examples of disputes over chlorinated chicken and genetically modified foods.”²³³ The EU has long been cautious about food safety, adopting its well-known “precautionary principle.”²³⁴

One area of special concern has been the EU’s reluctance to permit the importation or introduction of certain genetically modified seeds and crops into its borders. The U.S. and the EU have arbitrated the issue at the WTO, and in 2006, the European

229. *TTIP Myths Shattered by New GUE/NGL-Backed Report*, GUE/NGL (Apr. 8, 2014), <http://www.guengl.eu/news/article/ttip-myths-shattered-by-new-gue-n-gl-backed-report>.

230. *240 Arrested in Anti-TTIP Protest at European Business Summit*, *supra* note 203.

231. This term is widely used. *See, e.g.*, J.P., *Frankenfoods Reduce Global Warming*, *ECONOMIST* (Mar. 4, 2013, 3:30 PM), <http://www.economist.com/blogs/feastandfamine/2013/03/gm-crops-and-carbon-emissions>.

232. Chlorine in various forms is used widely in the U.S. in the preparation of poultry to combat salmonella and other diseases. *See* Scott Russell, *Chlorine: Still the Most Popular Sanitizer in the Poultry Industry*, *THE POULTRY SITE* (Apr. 1, 2009), <http://www.thepoultrysite.com/articles/1383/chlorine-still-the-most-popular-sanitizer-in-the-poultry-industry>.

233. Noll, *supra* note 199.

234. *See, e.g.*, *Food Safety in the EU*, EUROPA.EU, http://europa.eu/pol/food/index_en.htm (last visited Mar. 17, 2015).

import ban was ruled illegal; however, the conflict was not resolved because the U.S. deemed the EU's subsequent rule modifications inadequate, and the impasse over GMOs continued.²³⁵

In June 2014, the EU agreed to relax the restrictive prohibitions on some GMO crops, as it "approved an overhaul of the bloc's system for regulating biotech crops" permitting governments to choose whether they wish to restrict them or not, even for nonscientific reasons.²³⁶ The EU countries are mostly against importation of such crops, while a few (such as Spain, the UK, and the Netherlands) have been more permissive; "[o]nly one biotech crop, a corn developed by Monsanto, is approved for cultivation in the EU."²³⁷ Still, even as the EU relaxes prohibitions, it maintains that TTIP will not change its current legislative requirements on GMOs.²³⁸

U.S. Ambassador to the EU Anthony Gardner recently attempted to rebut the more evocative issues about chlorinated chicken and genetically modified crops. He argued that Europe's own Food Safety Authority has concluded that the various forms of chlorine wash used to clean poultry pose no health or safety concerns and that "various genetically modified species of soybean, maize and cotton are as safe as their conventional counterparts."²³⁹ Gardner subsequently defended the trade deal in the EU Parliament, and "[i]n a combative debate with deputies on the European Parliament's international trade committee . . . [he] said that the TTIP had 'triggered a wave of criticism that can only be described as scaremongering.'"²⁴⁰

The discussion is complicated: no one would be forced to buy any products from either trade bloc; most consumers would prefer the most natural food products available, yet less expensive products might be difficult for some consumers to resist. Markets would no doubt be affected, and producer interest groups have a

235. Jonathan Stearns, *EU Nations Back Flexibility on Biotech-Crop Cultivation*, BLOOMBERG (June 12, 2014, 9:05 AM), <http://www.bloomberg.com/news/2014-06-11/eu-nations-set-for-breakthrough-on-biotech-crop-cultivation-law.html>.

236. Matthew Dalton, *EU Governments Back Overhaul of Rules for Biotech Crops*, WALL ST. J., June 12, 2014, <http://online.wsj.com/articles/eu-governments-back-overhaul-of-rules-for-biotech-crops-1402575849>.

237. *Id.*

238. *Food Safety and Animal and Plant Health in TTIP Factsheet*, EUROPEAN COMM'N, [http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153004.3%20Food%20safety,%20a+p%20health%20\(SPS\).pdf](http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_153004.3%20Food%20safety,%20a+p%20health%20(SPS).pdf) (last visited Apr. 5, 2015).

239. *Phony Fears on Trans-Atlantic Trade*, WALL ST. J., July 22, 2014, <http://online.wsj.com/articles/ttip-and-american-food-products-1405978984>.

240. Benjamin Fox, *'Scaremongering' Threatens Trade Deal, US Ambassador Warns MEPs*, EU OBSERVER (Sept. 4, 2014), <http://euobserver.com/news/125459>.

real stake and influence in the trade negotiations. In fact, acknowledging this, the ISDS topic raised so much opposition that the European Commission discontinued negotiations on ISDS temporarily, to allow for a public consultation.²⁴¹ Consultations drew a huge reaction against the ISDS:²⁴² “Leaving out ISDS may be the only way that TTIP can pass through the European Parliament and – possibly – national legislatures.”²⁴³

Likewise, data protection presents so much controversy that the EU excluded it early on from the negotiations.²⁴⁴ European notions of privacy matched poorly with the U.S. tech industry’s needs for more certainty in the area, with the more relaxed treatment of privacy in the U.S.²⁴⁵ The EU’s Chief Negotiator Bercero insisted that personal data flowing between the EU and other countries must follow EU data protection laws, and he warned that the European Parliament “[has] voted in favour of withholding consent for the TTIP if it does not fully respect EU data privacy rules.”²⁴⁶

Others criticize the EU-U.S. trade deal because they allege TTIP would short-circuit and reduce the effectiveness of the multilateral WTO system. For example, “former WTO Director General Supachai Panitchpakdi recently warned that the TPP and Transatlantic Trade and Investment Partnership could harm the international trading system [in that] TTIP and TTP together could drive the world back into the old days before the WTO was conceived”²⁴⁷

The trade deal’s impact on global development has also surfaced as an issue. Just two weeks after the elections, EurActiv Germany reported: “As if the quickly approaching deadline for the UN’s post-2015 development goals [Millennium Development Goals] were not enough, experts have warned that the planned

241. *EU Freezes Part of Transatlantic Trade Negotiations with US*, DEUTSCHE WELLE (Jan. 21, 2014), <http://www.dw.de/eu-freezes-part-of-transatlantic-trade-negotiations-with-us/a-17376907>.

242. Finbar Bermingham, *TTIP: 150,000 Register Concerns over Controversial ISDS Clause of Free Trade Agreement*, INT’L BUS. TIMES, July 24, 2014, <http://www.ibtimes.co.uk/ttip-150000-register-concerns-over-controversial-ids-clause-free-trade-agreement-1458132>.

243. Fox, *supra* note 146.

244. James Fontanella-Khan, *Data Protection Ruled Out of EU-US Trade Talks*, FIN. TIMES, Nov. 4, 2013, <http://www.ft.com/intl/cms/s/0/92a14dd2-44b9-11e3-a751-00144feabdc0.html#axzz3DDRUMv9n>.

245. *Id.*

246. Monika Emert, *TTIP Still in ‘Exploratory’ Phase on GIs; Data Flows Tied To Privacy Regimes*, INTELL. PROP. WATCH (Mar. 14, 2014), <http://www.ip-watch.org/2014/03/14/ttip-still-in-exploratory-phase-on-gis-data-flows-tied-to-privacy-regimes/>.

247. Mike Palmedo, *USTR Tells Press that TPP Negotiators Are Down to “A Dozen Issues,” While House Republicans Threaten to Withhold Support*, INFOJUSTICE.ORG (July 28, 2014), <http://infojustice.org/archives/33047>.

[TTIP] threatens to contradict global development targets.”²⁴⁸ A German member of the Bundestag admonished trade negotiators not to strike a trade deal that contradicts the sustainable development goals, by querying how European countries can expect the U.S. to follow the labor standards embodied in the International Labor Organization’s eight conventions when the U.S. recognizes only two of them.²⁴⁹ A representative from a development NGO agreed that TTIP would set global standards in trade and investment for the next decades, and the developing countries will be unable to argue for higher standards in their trade deals.²⁵⁰

Thus, free-trade criticism comes from many points of the compass. The main thrust of the TTIP negotiations is to reduce costly, duplicative and inconsistent regulations, and ultimately to ensure “harmonising [sic] standards across an exhaustive list of manufacturing and services industries.”²⁵¹ No doubt, the equalization movement will address many complaints which led to the unexpected Parliamentary results.

C. The Parliament Going Forward

The European Parliament now plays a double role in any trade agreement advancing. The newly reconstituted, legislative assembly with its new anti-everything members will debate the trade deal loudly, requiring open access to all negotiation documents and regularly updated reports from the Commission, thus helping shape the discussion going forward. In the end, either the MEPs will approve TTIP or they will not:²⁵²

[W]hether a signed contract will even enter into force once all is said and done also lies in their hands, since the contract must be ratified by the European Parliament. This is more than a mere formality, as was evident in July 2012 when the parliament put an end to the Anti-Counterfeiting Trade Agreement (ACTA) in reaction to public protest.²⁵³

248. Patrick Timmann, *TTIP Contradicts Post-2015 Development Goals, Experts Say*, EURACTIV (June 11, 2014, 10:29 AM), <http://www.euractiv.com/sections/development-policy/ttip-contradicts-post-2015-development-goals-experts-say-302704>.

249. *Id.*

250. *Id.*; see also FED’N OF GER. INDUS., *TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP (TTIP): MYTHS, FACTS, & ARGUMENTS* (2014), available at http://www.bdi.eu/bdi_english/download_content/TTIP_Myths_Facts_Arguments.pdf.

251. Fox, *supra* note 146.

252. Noll, *supra* note 199.

253. *Id.*

One expert, Judy Dempsey, senior associate at Carnegie Europe, expressed concern that the negotiations were in danger because few European political leaders will defend such an unpopular initiative, especially amid a strong wave of anti-Americanism.²⁵⁴ She observed poor U.S. public relations after the NSA spying scandal, a botched Syria war effort which has disaffected many Europeans, and now TTIP, "exposing the very huge differences between America and Europe" which newly empowered fringe parties will have free rein to exploit.²⁵⁵ "Governments will be less willing to sacrifice fragile political capital in favor of an unpopular trade agreement from which they are unlikely to make immediate political gains," said Eurasia Group's analyst Antonio Roldan.²⁵⁶ A year after negotiations began amid optimism, the attitude in negotiation rooms is more defensive and a meaningful agreement is uncertain.²⁵⁷

A July 2014 Associated Press report stated that "[v]isions of chlorine-drenched chicken and the prospect of genetically modified 'Frankenfoods' invading dinner tables across the European Union are proving serious impediments" to reaching agreements on the TTIP.²⁵⁸ The report added that anti-U.S. distrust following the spying scandal, as well as general pre-election political implications in both the U.S. and the EU have not helped.²⁵⁹

Moreover, anti-U.S. sentiment may be reinforced by other sources. Russia provided financial support and encouragement to the far-right parties who won seats in the EU Parliament, potentially giving Russia "a stronger voice in Brussels."²⁶⁰ Two experts with the Open Society Foundation expressed the reasonable fear that the populists' electoral success in May could tempt, or perhaps force, mainstream political leaders to adopt much of the xenophobic and anti-EU signals, creating a demagogic atmosphere, with "a large and noisy group of populists cau[sing]

254. *EU Vote May Complicate US Ties: Analysts*, EUBUSINESS (May 29, 2014), <http://www.eubusiness.com/news-eu/vote-us.weo>.

255. *Id.*

256. Juergen Baetz, *US-EU Trade Talks Sour Amid Chlorine Chicken Fears*, ASSOCIATED PRESS, July 18, 2014, available at <http://bigstory.ap.org/article/us-eu-trade-talks-sour-amid-chlorine-chicken-fears>.

257. Fox, *supra* note 146.

258. Baetz, *supra* note 256.

259. *Id.*

260. Erik Brattberg, *Europe's Elections May Complicate Efforts to Confront Russia and Complete a Transatlantic Trade Pact*, ATLANTIC COUNCIL (May 25, 2014), <http://www.atlanticcouncil.org/blogs/new-atlanticist/europe-s-elections-may-complicate-efforts-to-confront-russia-and-complete-a-transatlantic-trade-pact>.

the whole parliament to listen to a narrower range of interests, too busy dealing with gimmicks rather than real issues.”²⁶¹

As the first plenary meetings of the new Parliament in July 2014 included debate over TTIP, the GUE/NGL group coordinator on the International Trade Committee, Helmut Scholz, called for a halt to the TTIP negotiations.²⁶² With three members on the International Trade committee, the GUE/NGL political group is thought to be hostile to TTIP.²⁶³ Coincidentally, Marine Le Pen is also a member of that committee, and German Socialist Bernd Lange has warned that an investor-state dispute settlement mechanism may cause the Parliament’s next resolution on TTIP to be negative.²⁶⁴ Others on the Committee, the Green’s Yannick Jadot and Ska Keller, go so far as to call for the European Commission’s mandate to negotiate the TTIP to be withdrawn.²⁶⁵

Support for TTIP can be found in centre-right EPP, the conservative ECR, and the Liberal and S&D groups, all of which “will almost certainly be needed to reach the 376 total out of the Parliament’s 751 deputies required to pass an agreement.”²⁶⁶ Most Europeans have not made up their minds about TTIP, so the trade deal “remains a fragile creature, at the mercy of politicians and public opinion.”²⁶⁷

V. CONCLUSION

The 2014 EU elections are not likely to cause seismic shifts in the governance of the EU, as the major centrist parties retain control, and the dissidents are divided.²⁶⁸ Yet, advances in European integration will likely slow to a glacial creep, and the controversial TTIP may survive as a shell of what leaders had envisioned; alternatively, it may well be delayed indefinitely, effectively smothered to death. The toxic political environment

261. Eleanor Kelly & Heather Grabbe, *What Do the Results of the European Elections Mean for Open Society?*, OPEN SOC’Y EUROPEAN POLICY INST. (May 27, 2014), <http://www.opensocietyfoundations.org/voices/what-do-results-european-elections-mean-open-society>.

262. *GUE/NGL Demands TTIP Talks to Be Put on Hold: Real Democracy Now!*, GUE/NGL (July 15, 2014), <http://www.guengl.eu/news/article/gue-ngl-news/gue-ngl-demands-ttip-talks-be-put-on-hold-real-democracy-now>.

263. James Crisp, *Le Pen Won’t Hijack TTIP Committee, Vow MEPs*, EURACTIV (July 16, 2014), <http://www.euractiv.com/sections/eu-elections-2014/trade-meps-vow-stop-le-pen-grandstanding-ttip-303504>.

264. *Id.*

265. *Id.*

266. Fox, *supra* note 146.

267. *Id.*

268. *Bucked Off*, *supra* note 34 (“Within the European Parliament, the populists will probably squabble so much that the pro-European 70% can continue in their usual consensual way.”).

in which the elections were conducted will inhibit political leadership on controversial European topics, and assuredly the widely opposed TTIP.

These are hard times in the European Union, economically and politically, and politicians have responded defensively. Anti-EU, anti-American, anti-globalization forces have found their voice, expressed in “restore the good-old-days” rhetoric emphasizing sovereignty, safe and protected food, farms, air, and labor markets. Absent extraordinarily strong and effective leadership from Chancellor Merkel, President Obama, or other influential leaders, only a tepid agreement, if one at all, may be expected.²⁶⁹

Trade leaders on both sides should be encouraged to resist the negative surges that inevitably come from interest groups. A merely modest trade agreement is worth pursuing for multiple reasons. Even minimal trade liberalization would achieve economic efficiencies and translate into some desperately needed economic growth. Moreover, an agreement would encourage further regional trade agreements that could spin off further economic and political benefits. Today, few argue against Cordell Hull’s famous mantra that an increase of trade, interaction, and prosperity, in actuality, facilitates peace.²⁷⁰

In addition, free-traders could hardly resist considering the impact of the broader trade collaboration suggested by Robert Zoellick, the respected former USTR and World Bank president, who suggested that TTIP could expand even further by exploring a larger North American dimension, adding Mexico and Canada to enlarge the trade facilitation and long-term goal of deeper integration.²⁷¹ Surely, these free-trade advocates would also dream of including the Transpacific Partnership, adding eleven more countries to the group.²⁷² Such an enlarged and advanced free(er)-trade area would accomplish huge economic gains from international trade, again with the bonus spillover in international good relations.

269. Baetz, *supra* note 256 (stating that some predict no deal will be reached until after Obama’s second term is over in 2017).

270. See, e.g., *Biographies of the Secretaries of State: Cordell Hull*, OFFICE OF THE HISTORIAN, SECRETARY OF STATE, <https://history.state.gov/departmenthistory/people/hull-cordell> (last visited Feb. 7, 2015).

271. James Politi, *Contentious NAFTA Pact Continues to Generate a Sparky Debate*, FIN. TIMES, Dec. 2, 2013, <http://www.ft.com/intl/cms/s/0/b7230156-4c51-11e3-923d-00144feabdc0.html#axzz33P9vknkDB>.

272. *Trans-Pacific Partnership (TPP)*, *supra* note 207 (“The Trans-Pacific Partnership (TPP) is an ambitious, 21st century trade agreement that the United States is negotiating with 11 other countries throughout the Asia-Pacific region (Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam).”).

Some bold advocates of further European integration as the best way to cure the current ailments of the EU have spoken out,²⁷³ but to less of a reception than the often shrill “anti-” litany issuing from the political opportunists. The call for informed and skilled leadership in these challenging times is strong; further international collaboration building stronger economic growth is achievable through free-trade agreements, of which the most far-reaching today is the Transatlantic Trade and Investment Partnership.

273. See, e.g., Op-Ed, Alexander Kudaschef, *A Political Dream Fulfilled*, DEUTSCHE WELLE (May 25, 2014), <http://www.dw.de/opinion-a-political-dream-fulfilled/a-17659931>.