**ESF Draft Response to**

**DG Trade Questionnaire on a**

**deep and comprehensive free trade area with Tunisia**

***NOTE: ESF Draft responses are in Blue. Only the questions where some proposal for a response have been made are replicated here. In many instances, ESF cannot reply directly to the specific question, and suggests instead a larger horizontal reply.***

Section 2 - Questions on trade, investment and economic relations

**I. OVERALL TRADE, INVESTMENT AND ECONOMIC RELATIONS**

1. What are your overall views on the EU-Tunisia DCFTA negotiations?

ESF supports the negotiations for an ambitious DCFTA with Tunisia, that will cover all issues beyond trade in goods, in particular trade in services and investments, public procurement, and regulatory cooperation.

2. Are you aware of the existing Free Trade Area between the EU and Tunisia?

YES

3. Have you used the opportunities created by the existing Association Agreement (including the Free Trade Area), in terms of tariff preferences or in some other way?

Not much, given that the existing Association agreement does not cover trade in services and investments. EU service companies benefited only partially and indirectly, like the companies in transport, the retail and wholesale companies and some financial services related to imports and exports like banking and insurance and reinsurance.

4. Have you benefited from the more open trade regime created by the existing Association Agreement in terms of trade or investment opportunities? Can you provide an example?

See Q3.

6. Do you consider that the current level of openness to trade and investment between the EU and Tunisia is sufficient? If not sufficient, what are the remaining barriers?

No. The current level of openness to trade and investment between the EU and Tunisia is far from sufficient, not only in trade in goods, but above all on trade in services and investments.

7. Where do you see the greatest potential/threat of the negotiations for a future EU-Tunisia DCFTA?

Services represent 61.3% of Tunisia GDP. The DCFTA should increase opportunities for EU services companies to contribute to the development of the Tunisian economy by allowing more investments and trade in services. Today Tunisia has a benefit of trade in services with the EU (+1.4 Billion Euros in 2014). This benefit is reducing in the recent years only due to reduction of exports of tourism linked to tragic terrorists attacks.

8. In what areas do you anticipate an impact (positive/negative) on consumers from a further reduction of barriers to trade and investment between the EU and Tunisia? (e.g., prices, choice and availability, product quality and safety, consumer information, protection of consumer rights, etc.)

All services sectors, if properly opened and regulated, should benefit consumers from a further reduction of barriers to trade and investment between the EU and Tunisia. The EU deficit in trade in services is the second largest after Turkey. It notably demonstrate the difficulties for EU services businesses to penetrate the Tunisian market and sell cross-border services due to lack of openness in financial services, telecommunication & IT, shipping, postal and express, professional services.

9. In your opinion, what are the **potential human rights impacts** (including on non-discrimination, and on gender-related issues) or social impacts (including on labour rights) that should be taken into account when aiming to reduce barriers to trade and investment between the EU and Tunisia? Please highlight potential negative or positive impacts (ie, risks or opportunities).

If well managed, the DCFTA should have a positive impact on human rights, with EU firms bringing management and corporate social responsibilities to the country.

10. In your opinion, what are the potential environmental and climate change impacts that should be taken into account when aiming to reduce barriers to trade and investment between the EU and Tunisia? Please highlight potential negative or positive impacts (ie, risks or opportunities).

If well managed, the DCFTA should have positive environmental and climate change impacts, with further investments in clean and renewable energies from EU firms.

11. In your opinion, what are the **socio-economic development issues** (e.g. unemployment, inequality, etc.) that should be taken into account when aiming to reduce barriers to trade and investment between the EU and Tunisia?

A DCFTA between EU and Tunisia will trust in the Tunisian economy, will increase trade and investment between the parties and hence will create jobs, boosting growth in a Tunisia that has been seriously hit by economic difficulties, notably decrease of tourism from the EU following terrorists’ attacks.

**II. TRADE IN GOODS**

**ESF Secretariat has not been in position to reply to any of the questions related to Trade in goods, but would be happy to include any Members contribution, notably for the section E on Trade facilitation (imports, exports, transit procedures).**

**III. TRADE IN SERVICES, INVESTMENT AND INVESTMENT PROTECTION**

Investment and trade in services are cornerstones of the EU economy. The EU is the largest source and destination of foreign direct investment (FDI) worldwide, as well as the world's largest exporter of services. These exchanges, which support several million jobs in the services sector throughout the EU, have increased significantly over the past ten years. Tunisia also has a large services sector, which accounts for more than 60% of its GDP and more than 50% of total employment. For more information on the role of services trade and investment in the intended DCFTA with Tunisia, consult [*this factsheet*](http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154507.pdf) by the European Commission.

On 17 September 2016, Tunisia's parliament approved a new law on investment. The new law, which will enter into force on 1 January 2017, streamlines the legal framework for investment and establishes a one-stop-shop for investors as well as a fund for investment which will grant different types of financial incentives to promote, inter alia, regional development, employment and competitiveness. The new law will be accompanied by 3 decrees being finalised (on governance issues, financial incentives, nomenclature and authorisations) and a law on fiscal incentives, which still needs to be discussed in the Tunisian parliament and should also come into force on 1 January 2017.

48.  Please describe any market access barriers/limitations that you are confronted with (e.g. equity caps, limitations on the number of expat personnel, lack of transparency in rules/regulations, monopolies, oligopolies, preference to local suppliers, local requirements, visa/permits restrictions, etc.)

The major interest of a DCFTA is to improve legal security of trade and investments. The current level of Tunisia’s legally binding level of commitments for trade in services are those undertook by Tunisia at the end of the Uruguay Round (see WTO Tunisia Schedules) which are very low, with only few commitments on financial services, telecommunications and tourism. Tunisia did not participate to the DDA GATS negotiations (no initial offer) and is not participating to TiSA. Many barriers remain.

49.  What are the main barriers that you encounter in cross-border services trade between the EU and Tunisia?

ESF has not studied the current legislation in Tunisia related to cross-border services trade. But what is clear is the nearly total absence of Mode 1 commitments by Tunisia in its WTO GATS Schedule. So ESF calls EU negotiators to ensure that Tunisia tables only reasonable restrictions in the proposed Annex III of the Services schedule.

50.  What are the main barriers that you encounter in establishing your activity in Tunisia?

ESF has not yet studied the current legislation in Tunisia related to inward investment in the services sectors. But the Mode3 commitments by Tunisia in its WTO GATS Schedule are very low and only in few sectors (financial services, telecom and tourism). So ESF calls EU negotiators to ensure that Tunisia tables only reasonable restrictions in the proposed Annex I and II of the Services schedule of the DCFTA, and hence takes commitments to open up, in an agreed transition period, many sectors.

51.  What are the main barriers that you encounter with regard to the temporary movement of natural persons for business purposes? Please indicate which categories or kinds of staff are involved in temporary movements, and for what duration of time.

EU Companies encounter difficulties in sending staff to subsidiaries, to clients or to prospect the local market. Tunisia should take more commitments to allow temporary movement of natural persons for business purposes. So ESF calls EU negotiators to ensure that Tunisia tables only reasonable restrictions in the proposed Annex VI of the Services schedule of the DCFTA. ESF also calls for the DCFTA to find ways in favouring more expedite delivery of business visas, both sides.

54. Do you experience these kinds of barriers also in other countries of the same geographical area? If not, what is the situation in these other countries?

Yes. ESF encourages the EU to re-engage with Morocco. The negotiations for a Deep and Comprehensive Free Trade Area (DCFTA) between the EU and Morocco were launched on 1 March 2013. Four negotiating rounds have taken place so far, but the most recent in April 2014. The two-way trade in services amounted to €8.6 billion in 2014 with EU imports of services representing €5.1 billion and exports €3.5 billion, with hence a deficit for the EU of - €1.5 billion, which reflects trade difficulties.

*The EU proposal for the investment protection chapter of the DCFTA with Tunisia will follow the EU's new approach, which includes: clearer investment protection standards; the right to regulate in the public interest; increased transparency; and an Investment Court System in place of other mechanisms for investor-state dispute settlement (ISDS). In other words, the investment protection chapter will be similar to that included in the agreements recently concluded with Canada and Vietnam.*

*The investment protection chapter proposed for the DCFTA will replace the existing bilateral investment treaties of EU Member States with Tunisia, which include the ISDS mechanism and do not contain the newer elements of the EU approach. The agreement would also cover investors from those EU Member States that at present do not have a bilateral investment treaty with Tunisia.*

58. Do you agree that the EU's new approach to investment protection with respect to Tunisia is an improvement on the current situation? If yes, in which specific ways is it an improvement? If no, why not?

ESF notes that 19 EU countries have a BIT with Tunisia. ESF welcomes a deal that will cover investors from all EU Member States. ESF would rather favour a Multilateral Investment Court that the proposed ICS, which is not sufficiently neutral with the defendant country also sitting in the tribunal/court. ESF welcomes many aspects of the new EU investment protection approach (incl. more transparency) but question the real possibility to obtain compensation for indirect expropriation.

**B. Competition policy**

Harmonisation of competition rules is an important factor driving economic integration between the EU and Tunisia. Open and fair competition ensures fair conditions for EU and Tunisian firms. For more information on the role of competition policy in the intended DCFTA with Tunisia, consult [*this factsheet*](http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154505.pdf) by the European Commission.

64. Have you been confronted with anti-competitive practices in Tunisia (cartels, abuse of dominant position, vertical or horizontal restrictions of competition) that are harming your business? If yes, describe briefly the nature of the practices and the problems that you have encountered.

ESF encourage the parties to put in place an antitrust and merger legislation in line with the EU acquis. Tunisia must have an operationally independent competition authority with sufficient resources and powers to ensure effective enforcement of competition rules. The EU should provide technical assistance in this regards if needed.

66. Are you aware of instances where government subsidies or state aid to firms in Tunisia have made it more difficult for you to compete, both in its domestic market and in export markets? If so, please describe the type of subsidies or state aid involved (e.g. grants, export rebates, tax/duty exemptions, below-market loans, etc.) and give an estimate of their amount.

Similarly, with the view to the approximation of the Tunisia legislation to the EU law acquis, ESF encourages the parties to put in place state aid legislation that will be in line with the EU legislation on that matter and the setting up of operationally independent state aid authorities with sufficient resources and powers to ensure effective state aid control. The EU should provide technical assistance in this regards if needed.

68. Have you been confronted with instances of preferential treatment in favour of Tunisian state-owned enterprises? If so, please explain.

To ensure a complete and effective DCFTA, the agreement should include a chapter setting up disciplines for the state-owned enterprises. The EU FTA agreement with Vietnam as well as the draft proposed text in the context of TTIP might be used as references. The proposed text by the EU falls short of setting up such disciplines

**C. Government procurement**

Tendering for public contracts is about how public authorities spend taxpayers' money when buying goods, works or services. Tunisia is reforming its economy to improve transparency, efficiency, and fair competition. Rules for ensuring that public money is spent in a transparent, efficient, and non-discriminatory way are paramount for achieving these goals. In this context Tunisia has started modernising its public procurement system with an objective to promote and institutionalise principles of transparency, fairness and efficiency in order to improve its management of public expenditure. A new decree on public procurement was issued on 13 March 2014, accompanied by the roll out on a pilot basis of the e-procurement platform TUNEPS. For more information on the role of public procurement in the intended DCFTA with Tunisia, consult [*this factsheet*](http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154509.pdf) by the European Commission.

Please respond with yes/no/no opinion, and where possible provide comments to expand on your replies to the following issues:

70. Are you satisfied with the current level of access to the Tunisian/European public procurement market?

ESF supports the EU proposal aiming at integrating into the DCFTA selected provisions of the Government Procurement Agreement (GPA) of the WTO (to which Tunisia is not a Party). The deal should include rules to maximise transparency of tenders for public contracts to ensure publicity to interested EU & Tunisian firms. More importantly, DCFTA should open market to a maximum of public entities that works through tenders, at all levels of government (central, sub-central), universities, hospitals.

71. Please indicate whether you consider the following possible elements of a chapter on public procurement to be a priority:

- Transparency in the tendering process

YES

- Easy access to the pre-selection/pre-qualification system of possible providers

YES

- Use of international rather than local technical standards

YES

- Effective review mechanisms including the possibility to obtain interim   measures

YES

- A single point of entry giving an overview of, and access to, all relevant public procurement opportunities in a given jurisdiction

YES

- National and MFN treatment

YES

**V. TRANSPARENCY**

The aim of the proposed DCFTA chapter on transparency is to provide for an effective, predictable and transparent regulatory environment in all areas covered by the agreement; so that economic operators are properly informed on regulatory requirements, and are able to make their views known when relevant laws and rules are changed. For more information on the role of transparency in the intended DCFTA with Tunisia, consult [*this factsheet*](http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154513.pdf) by the European Commission.

**GENERAL**: To the extent applicable, please reflect on the eventual problems you face due to a lack of transparency: for example, the lack of notification of legislation or other documents relevant for your operations and trading activities; the absence of transitional periods for the entry into force of legislation; the absence of mechanisms for consultation with the Tunisian government on legislation; inadequate/unclear appeal procedures for administration of trade-related procedures; etc.

In the questions below, the authorities that should conform to expectations of transparency in administrative behaviour should be understood to include central and local government; as well as regulatory bodies, regulatory authorities, certification offices, licensing authorities, etc. Please specify any shortcomings which you have identified.

Where **transparency** is of particular concern in one of the specific aspects of trade policy introduced above (e.g. concerning technical barriers to trade or sanitary and phytosanitary measures), or in one of the specific regulatory areas mentioned below, please specify this area. Where available, please identify best practices (such as existing information and transparency mechanisms) that could serve as reference or starting point.

74. What is your overall assessment of Tunisia's transparency and regulatory practices in the development and adoption of trade-related rules and regulations?

ESF welcomes the EU proposal for more transparency that was tabled at the April 2016's round. It will set up good regulatory practices, which will be necessary for a full functioning of the approximation process.

76. What other requirements or suggestions would you make regarding the availability of information?

ESF urges EU negotiators to make to its Tunisian counterparts a proposal on services domestic regulation that would be similar to the one tabled in TiSA, or at the very least to the one that would be discussed in the framework of the WTO 11th Ministerial Conference 2017 in Buenos- Aires, aiming at ensuring disciplines for better & more efficient measures relating to licensing requirements & procedures, and qualification requirements & procedures, technical standards affecting trade in services

**VI. TRADE AND SUSTAINABLE DEVELOPMENT**

The aim of this chapter in the DCFTA is to address sustainable development issues of relevance to trade in a comprehensive and efficient way, while respecting the specificities of each partner. It does not aim to harmonise domestic legislation. The parties seek a joint commitment to a high level of labour and environmental protection in the full respect of their international obligations; and to an effective implementation of the parties' respective legislation in the fields of labour and the environment. For more information, consult [*this factsheet*](http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154503.pdf) by the European Commission.

91. Should civil society organisations be involved in the monitoring of the implementation of the DCFTA, and in particular its provisions on trade and sustainable development? What would be the best way to do so?

ESF would welcome the establishment of a similar system than already set in other FTA, i.e. two Domestic Advisory Group (one per Party) and a Civil Society Forum. ESF insists however that such Civil Society Forum should indeed be involved in the monitoring of the implementation of the full DCFTA, and not only on the provision of the trade and sustainable development chapter. The Forum should be able to receive regular briefings and report to the Joint Trade Committee (or similar body).

**VII. SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)**

Forming an essential part of the EU's [*overall trade strategy*](http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153846.pdf), the needs of SMEs are specifically addressed in all trade agreements. For example, the Commission recognises that the costs of entering a new market (for internationalisation, for penetrating new markets, for overcoming trade and investment barriers and for complying with regulation) weigh more heavily on SMEs, which have fewer resources, than on larger firms. The same asymmetries apply to access to information about market access opportunities. Large companies may be able to afford legal and economic advice on regulatory requirements, something which is more difficult for SMEs.

In the MENA region, SMEs contribute significantly to the economy. In Tunisia, for example, 98% of all firms employ less than 100 employees, accounting for 45% of all employment in private enterprises in the country. 26% of SMEs sell their products to markets outside Tunisia. For more information on the characteristics and challenges faced by Tunisian SMEs, see [*this recent study by the EIB*](http://www.eib.org/attachments/efs/economic_report_neighbourhood_sme_financing_tunisia_en.pdf).

Please respond with yes/no, and where possible provide comments to expand on the replies to the following issues.

92. Please indicate issues of high priority for SMEs in order to help them to benefit from a possible trade agreement with Tunisia.

98% of all EU companies are also SMEs. ESF welcomes measures in the agreement that would help SMEs to increase business opportunities by knowing where to find the right information on how to export and how to invest in the EU and in Tunisia.

93. Do you think that specific provisions for SMEs should be covered in some areas of the Tunisia negotiation?

YES

If yes, what SME provisions would you propose?

See EU Proposal in TTIP talks.

**VIII. OTHER ISSUES**

96. Are there any other issues related to the topics covered by this questionnaire, or to any other issues relating to trade between the EU and Tunisia which have not been covered, that you would like to address?

In order to better achieve the aim of progressive approximation of the Tunisian legislation to the EU law acquis, ESF would like to suggest to put into place a proper system of regulatory cooperation between the two parties.

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