



A transatlantic Ezine brought to you by Grayling Brussels and Grayling Washington D.C., providing you with differing perspectives on issues currently spanning 'the pond'.

## A Message from Grayling's CEO, Pete Pedersen



►Welcome to issue #2 of the PondHopper, the Grayling global network's newsletter on transatlantic economic and business trends.

Grayling is proud to represent a number of multinational institutions that - virtually every day - have pressing issues before legislative and regulatory bodies in both Washington, D.C., and the European Union in Brussels. These issues, whether a proposed environmental regulation or an industry-wide bilateral trade initiative, have a profound impact on our clients' bottom line and brand.

Our combined Washington-Brussels government/public affairs expertise not only provides Grayling clients with a potent

one-two punch but also helps decision-makers in both capitals better appreciate industry and institutional concerns.

Although the second round of negotiations was due to take place in Brussels from 7th - 11th October, the US government has postponed discussions due to the partial shutdown of its services which began on Tuesday 1st October. Karel de Gucht - European Commissioner for Trade - reaffirmed the EU's ambition to push forward with the negotiations as soon as possible. Given the significance of a transatlantic trade agreement between the US and the EU and new uncertainties surrounding its development, it will be more important than ever for Grayling

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to help clients assess the state of play and evaluate potential threats and opportunities. Similarly, we can help clients communicate their concerns to decision-makers and negotiators. Among the critical issues expected to be discussed in this negotiation round include rights for multinational corporations to sue states, the inclusion of financial institutions, regulatory cooperation, and data protection.

In this edition, we will take a closer look at the issues of financial services and data protection in the framework of the TTIP negotiations. In addition, we assess President Obama's intent to nominate Anthony Luzzato Gardner as the new US Ambassador to the EU.

I look forward to the upcoming negotiations and hope that the PondHopper will provide you with valuable insights ●

**Pete Pedersen**  
Grayling CEO  
[pete.pedersen@grayling.com](mailto:pete.pedersen@grayling.com)

# FINANCIAL SERVICES - PAYBACK FIVE YEARS AFTER THE COLLAPSE... *IS TTIP THE ANSWER?*



► **Should financial services become part of the TTIP agreement? Our financial services expert, Mary-Clare Fitzgerald is convinced that they should.**

A five-year delayed “Payback” appears to be taking place against major financial services firms. Certain policymakers are calling for harsh regulatory action against big financial institutions, recognizing the rising public frustration as the global economic recovery remains sluggish and uneven. The question not being asked, as regulators and policymakers wrangle over whose regulations more effectively punish financial institutions for the 2008 economic collapse, is this:

When will rational thought leaders come together to substantively assess the health and future of the world’s financial institutions and put forward the roadmap for the future of these most critical of worldwide institutions? If not the TTIP negotiations, is there a need for convening an apolitical body of experts to give the world the appropriate regulatory structure for healthy global financial institutions?

**Among the key elements in the debate are these factors:**

- 1.** The U.S. Federal Reserve, historically the lead player internationally on monetary issues, is uncharacteristically dealing with several problems: (a) protecting the economy against rash Congressional behavior; (b) handling political machinations over its next chairman; and (c) addressing low morale and internal dissension.
- 2.** The past “sins” of international bankers are the focus five years after the economic collapse – at the time when rational thought leaders need to bring global financial experts together to design the future framework;
- 3.** The “victories” for the consumer that were enacted in the Dodd/Frank Act in 2010 – the Consumer Financial Protection Bureau and the election of its most outspoken champion – have galvanized consumer groups worldwide, spotlighting past “sins” while delaying critical discussion on future financial global structure.

**4.** The same consumer proponents have called for leaving financial services out of the TTIP, suggesting that this would provide a backdoor way to weaken Dodd/Frank rules.

**5.** The banking industry, for one, and to some extent, the securities and insurance sectors, assessing whose voices would be heard if financial services were a part of the TTIP negotiations, have opted to remain neutral.

**6.** The EU has moved on several key regulatory issues, such as money market funds, but remains concerned about whether US rules should apply to their U.S. affiliates, and whether they’re seen as “tougher” on financial services than their U.S. counterparts.

**CONCLUSION**

Our view at Grayling is that there is a critical and immediate need for a forum to engage in substantive discussion on the future of financial services. TTIP may be a possibility, but convening a separate global roundtable may be the preferred venue. Mutual Recognition Agreements could possibly result from such deliberations, and clearly a leader of stature is required to serve initial chair. Financial services are central to the future of a healthy global economy and needs to be released from the narrow constraints of the “Too big to fail – Too big to jail” debate in which it is currently mired ●

**MaryClare Fitzgerald**  
Grayling, Vice President, Director, Financial Services

“ A five-year delayed “Payback” appears to be taking place against major financial services! ”

## DATA PROTECTION – CAN THE TTIP OVERCOME A “TRANSATLANTIC CLASH”?

### *Personal Data across the Atlantic – Two different approaches*



► **Personal data refers to any information related to an individual, be it part of the private, professional or public life. Protecting such data has been at the heart of the EU since its very beginning; The Union of 28 Member States has enshrined the principle of data protection in its Charter of Fundamental Rights, setting it apart from other human rights charters that treat personal data as a mere extension of the right to privacy.**

In the EU, this fundamental right of data protection in 1995 resulted in the adoption of a piece of horizontal legislation – the EU Data Protection Directive, which also prohibits companies from transferring any data about EU citizens to the jurisdiction of the US for instance.

The US on the contrary has a different approach on data security, as it relies on various sector-specific laws, including rules that restrict the use of citizens' medical records or credit reports, for example. This vertical legislation is combined with self-regulation by the industry, which is perceived as being more effective in responding to the rapidly changing technological field and the growth of the internet.

#### **Overcoming the “Transatlantic Clash”?**

With the global economy growing together more closely, the two approaches have resulted in what some refer to as a real “transatlantic clash”, as many American companies operating in Europe are impacted significantly by horizontal rules on data protection, hampering the extent to which data can be moved from the EU to the US.

A recent throwback to previous attempts of harmonizing data protection rules was the leaked information about the so-called PRISM programme – the mass data collection programme of the US National Security Agency. In light of this, the EU has reaffirmed that even if data collection is necessary in a national security issue, it cannot come at the expense of EU citizens. Consequently, at this stage it seems more difficult than ever to agree upon a common approach on the protection of personal data.

#### **What Role for Data Protection in TTIP?**

While the inclusion of civil rights in trade negotiations remains up for debate, the US has begun pushing for the issue of data protection to be considered in the framework of the TTIP negotiations.

In order to understand this push by the US, it is key to reflect upon the following. It is argued that if the EU will be able to hold on to its stringent data protection rules, Europe could gain a competitive advantage over the US. Indeed, recent scandals and the overall European sentiment regarding the US' approach to data protection are interpreted to have undermined trust in American companies in Europe already to some extent.

Based on past negotiations, when the EU gave in to US demands and consequently weakened its rules on data protection, such as transferring data to law enforcement authorities outside the EU and agreeing to financial data and airline passenger records transfers, the framework of the TTIP negotiations could be seen as a catalyst for softening European rules even further.

Leading European decision-makers, including EU Trade Commissioner Karel de Gucht have suggested discussing a separate agreement on data protection outside of the scope of TTIP. However, even if the issue will not be discussed under the TTIP, both sides of the Atlantic will have to find a solution to overcome the gap between different rules concerning data protection in light of the common wish to bring both economies together more closely.

No matter what the framework for negotiations will be, the issue will continue to be politically charged for both, EU and US companies and more importantly European and American citizens, as in the end, it is their personal data that is concerned ●

## America's New Ambassador -Designate to the EU



**Anthony Luzzatto Gardner will need to tap all of those skills – and more – in negotiating the bilateral trade and investment deals that are on the EU-US docket, not to mention easing apprehensions between the two continents on recent surveillance revelations.**

Since 2007, Gardner, 50, a veteran of the National Security Council, has served as Managing Director of Structured Finance at Palamon Capital Partners, a private equity firm in London. He also served as Executive Director of European Leveraged Finance at the Bank of America London headquarters.

During the first Clinton Administration, Gardner served as the director for European affairs in the National Security Council under NSC Director Anthony Lake, where his responsibilities included

liaison with EU financial institutions. In 1990 and 1991, he had worked in the Directorate-General for Competition Policy of the European Commission.

His accreditation was submitted to the General Secretariat of the Council of the European Union. This submission gave the EU until August 7th, 2013 to lodge specific objections to his nomination. Gardner's nomination has now yet to be finalized by the White House and submitted to the Senate Foreign Relations Committee who must approve it.

Gardner's language proficiency – he speaks fluent French and Italian and lived in Rome when his father served as U.S. ambassador to Italy – should help him in Brussels. So will his transatlantic academic credentials. He received a B.A. from Harvard University, an M.Phil. from Oxford University, a J.D. from Columbia University Law School, and a M.Sc. from London Business School. He is regarded as one of the world's leading experts in private equity and investment finance ●

► **President Obama's new ambassador-designate to the European Union has a formidable background in international diplomacy, global financial services, national security, and foreign policy.**

### ► Grayling Washington DC

Grayling DC is a bipartisan, multidisciplinary government/public affairs strategy and management consulting firm fully integrated with the global Grayling communications network, with particularly close ties with our colleagues in Brussels. Grayling DC's professionals have worked at senior levels in Congress, the White House, federal agencies, presidential campaigns, dynamic corporations, leading trade associations, as well as in state and local government positions. Our team is made up of policy and communications experts who have worked on both the regulatory and legislative sides of government.

We help our clients build trust-based public-private partnerships that result in innovative solutions to complex policy problems and accelerated achievement of business goals. Grayling DC is well known as a positive contributor to the public policy process in a number of key areas including: Telecommunications and Technology, Energy, Environment and Sustainability, Transportation, Financial Services, Public Relations and Communications, Health Care, and Education ●

[kim.bayliss@grayling.com](mailto:kim.bayliss@grayling.com)



### ► Grayling Brussels

Grayling Brussels is a fully integrated, multinational and multilingual communications consultancy specialising in government relations, public affairs, public relations, investor relations, events and association management. In the political hub with the largest press corps in the world, our team of 35+ multinational and multilingual dedicated consultants manages the perception and reputation of blue-chips, multinationals, Belgian SMEs, trade associations and coalitions and ensures that clients are aware of upcoming legislation and prepared to shape the political landscape in a constructive way.

The Grayling Brussels government relations and public affairs practice brings together a wealth of client and agency-side experience in the trade sector. Our team is currently working with a range of blue-chip clients to help them understand both the threats and opportunities presented by a potential future Transatlantic Trade and Investment Partnership between the EU and the US ●

[russell.patten@grayling.com](mailto:russell.patten@grayling.com)