



EDRi, Access and Bits of Freedom thank IMCO for issuing a [draft Opinion on TTIP](#). In line with [EDRi's redlines](#) on TTIP, we would like to make some comments on the paragraphs proposed that fall within our scope of work and suggest amendments to the text.

For ease of reading, ~~deletions~~ are strike-through and **amendments** are highlighted in bold. *Comments* in each case are provided when relevant.

(...)

Political priorities

(...)

2. **a)** Is convinced, however, that TTIP should not only cut down barriers but also aim at **protecting and promoting** European high levels of consumer protection; ~~observes that in most sectors EU and US standards and regulatory environments ensure this high level;~~ considers, therefore, that ~~approximating our regulations~~ **TTIP** represents a unique chance to ~~establish~~ **maintain European** high-quality standards and laws for consumers ~~which will be the~~ **and set** de facto international standards; **while doing so, the right to regulate of the European Union and the Member States should be respected;**

Comments: Paragraph 2 should be more protective of EU standards and less focussed on establishing international standards. The currently proposed regulatory cooperation chapter in the TTIP would imply that the EU would need to consult the US administration before and during the legislative process. That would have a chilling effect on the EU Institutions, including the European Parliament and Member States' right to regulate.

As an *alternative* to the changes proposed, we suggest the deletion of both the second and third sentence of the second paragraph and the inclusion of an amendment to ensure the right to regulate of the EU institutions and Member States is respected in the outcome of the TTIP negotiations.

(new paragraph) 2. **b)** **Calls for the European Commission to respect the results of the public consultation on investment protection and investor-to-state dispute settlement (ISDS), which request the exclusion of ISDS in TTIP.**

Comments: 97% of the responses rejected its inclusion due to big concerns against it. Former and ongoing cases involving ISDS demonstrate ISDS creates a chilling effect on decision-making. The inclusion of ISDS would bypass European democracy and judicial systems.

(...)

Transatlantic technical standards as global standards

Comments: This part of the Draft Opinion refers to technical standards. In order to avoid misunderstandings of what standards this opinion is referring to, the word "technical" should be added.

6. Stresses that, while safeguarding the protection achieved by EU standards and **technical** regulations, TTIP should go beyond the WTO Technical Barriers to Trade Agreement, in areas such as conformity assessment, product requirements, or standards, as well as providing for transparency in the reparation and availability of technical regulations; **stresses, however, that the Commission should ensure no encryption or privacy standards are negotiated within TTIP, since their inclusion would create vulnerabilities to both businesses and citizens;**

Comments: The exclusion of encryption standards is of special importance because failure to do this would increase the vulnerability of protected information as any lock in standard could be degraded, thereby undermining the purpose of encryption. The imposition of encryption standards in a trade agreement like TTIP for the sake of "interoperability" would remove citizens' ability to meaningfully protect their security and privacy rights under articles 7 and 8 of the Charter of Fundamental rights of the EU. International technical standardisation bodies like the W3C or the IETF should be strengthened instead.

7. Calls for the setting-up of an ambitious and effective cooperation mechanism aimed at creating common standards where possible in existing procedures, **while safeguarding the protection achieved by EU standards and technical regulations**, and to ensure that there is no unintended divergence in future standards in key sectors; believes that EU-US common standards should be promoted in all international forums;

Comments: This amendment strengthens the purpose of the WTO Technical Barriers to Trade Agreement (TBT), that is, "[to encourage] countries to use international standards where these are appropriate, but it does not require them to change their levels of protection as a result of standardization".

Cf. http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#dAgreement

8. Emphasises that internationally agreed standards, where existing, **compliant with the Charter of fundamental rights of the European Union** and up-to-date, should be adopted by the US and the EU, for example in the electronic devices sector;

Comments: In addition to whether international standards exist or whether they are up-to-date, paragraph 8 should be improved by referring to the Charter of Fundamental Rights of the EU.

(...)

Make technical barriers to transatlantic trade history

10. Supports the establishment of a mandatory structural dialogue and cooperation between regulators, in complete respect of regulatory autonomy, in particular in the engineering sector, comprising electrical and mechanical machinery, appliances and equipment; stresses that this should involve early warning mechanisms and exchanges at the time of preparation of regulations; Legislation and regulations which aim to protect the rights enshrined in the EU Charter of Fundamental Rights should be excluded from this dialogue; believes that ~~regulatory divergences are the central non-tariff barrier (NTB) to trade, and that regulators should~~ **regulators may** explore ways to **reduce regulatory divergences**, promote compatibility, such as mutual recognition;

~~harmonisation or alignment of requirements;~~, provided that rights under the Charter of Fundamental Rights of the European Union and that primary and secondary EU legislation are respected and can be effectively enforced.

Comments: The amendment would strengthen the need for regulators to respect primary (including the Charter of Fundamental Rights) and secondary law of the European Union. We recommend adding an amendment excluding legislation and regulations which could violate the EU Charter of Fundamental Rights because of the role of the Charter itself.

(...)

(new heading) **Respect of EU Intellectual Property Rights legislation and processes**

(new paragraph) **14. Stresses that, while neither EU Member States nor the EU have adopted a decision on a comprehensive harmonisation of Intellectual Property Rights, including copyright, trademarks and patents, the European Commission should not discuss these issues in TTIP;**

Comments: The inclusion of such provisions could harm our rights to culture and free expression. Previous proposals for international trade agreements, such as [ACTA](#), which was rejected by the European Parliament in 2012, increased the privileges of certain economic operators at the expense of consumers and society in general. Provisions related to Intellectual Property Rights shall be discussed within democratic institutions, not rewritten in the course of a trade agreement, which is mainly focused on trade.

(new heading) **Protection of EU personal data and privacy**

(new paragraph) **16. Recalls that data protection cannot be negotiated as a non-tariff barrier in TTIP in order to respect Articles 7 and 8 of the Charter of Fundamental Rights of the European Union;**

(new paragraph) **17. Calls for the Commission not to include provisions on encryption in TTIP to ensure the constant update and improvement of high standards within the EU Internal Market.**

Comments: We propose these amendments to reiterate the exclusion of data protection and privacy in the negotiating directives given by the Council of the European Union to the Commission, as reiterated by many MEPs on several occasions already.

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