

EDRi recommendations to improve the draft Compromise Amendments (CAM) to INTA's Draft Report on TiSA

European Digital Rights (EDRi) is grateful for Rapporteur's efforts to reach compromises amongst the different amendments tabled by all political groups. In this document, EDRi would like to recommend improvements to the current version of the CAMs which fall within our scope of work.

SUMMARY

In view of the analysis below, EDRi recommends you to:



SUPPORT: CAM 14, 53, 62, 63, 64, 65



RECONSIDER certain aspects of: CAM 15, 20, 33, 34, 35, 36, 37, 38, 44, 61

DETAILED ANALYSIS

- Data protection and the right to privacy



RECONSIDER CAM 15: EPP, S&D, ECR, ALDE, GUE, Greens, EFDD

(Covers AMs 122 (MEP Belet); 212 (EFDD); 106 (ALDE); 108 (EFDD); 110 (ECR); 109 (GUE); 112 (Greens); original text):

Recital K:

K. whereas data protection is not an economic burden, but a source of economic growth; whereas restoring trust in the digital world is crucial; whereas data flows are indispensable to trade in services ***but should never compromise the EU's acquis on data privacy***

Comments: This CAM goes into the right direction. However, it is important to make two changes:

First, to **incorporate Amendment 116 and/or LIBE 1.d**, which restates the rejection of US' e-commerce proposal on TiSA, as it is detrimental to EU law and fundamental rights.

Second, "data privacy" is not an EU concept. "Data privacy" should be changed to **"data protection and the right to privacy"** in line with CAM 33.

**RECONSIDER CAM 33: EPP, S&D, ALDE, GUE, Greens, EFDD, LIBE and ITRE Committees**

(Covers AMs 336, 346 (Greens); 333, 334 (ALDE); 338 (S&D); 339 (GUE); 340, 344, 446 2nd part (EFDD), 341 (MEPs Michel, Ries and Deprez), 342 (MEP Scholz); LIBE A and 1 (b), ITRE (2) 2nd part; original text):

Paragraph 1- point c - point ii:

- ii. to acknowledge that data protection **and the right to privacy is are** not a trade barriers, but a fundamental rights, enshrined in Article 39 TEU and Article 7 and 8 of the Charter of Fundamental Rights of the European Union, as well as in Article 12 of the Universal Declaration of Human Rights; **to acknowledge that a high level of trust is essential to develop a data-driven economy; to guarantee full respect of this fundamental right, taking due account of recent developments in the digital economy and in full compliance with the European Court of Justice's ruling with respect to Safe Harbour; to incorporate a comprehensive, unambiguous, horizontal, self-standing and legally-binding provision, ~~acknowledge that~~ based on GATS Article XIV, which fully exempts the existing and future EU legal framework for the protection of personal data from these negotiations—this agreement, without any conditions that it must be consistent with other parts of TiSA; to apply such provisions to all other TiSA annexes will be replicated in the TiSA core text; to immediately and formally support such proposals in TiSA e-commerce Annex;**

to support proposals aimed at ensuring that domestic legal frameworks for the protection of personal information of users are applied on a non-discriminatory basis;

to apply the provisions enshrined in this Annex to all other TiSA Annexes, including on financial services;

Comments: while the CAM is almost perfect, we suggest to **delete "to immediately and formally support such proposals in TiSA e-commerce Annex"**, as any proposal should be fully considered and not be "automatically" approved. For instance, if the self-standing clause does not provide enough safeguards, asking the Commission to automatically support it could be dangerous.

**RECONSIDER CAM 34: EPP, ECR, LIBE Committee, ITRE Committee**

(Covers AMs 349 (ECR); LIBE F, 1(d); ITRE (5) 1st part; original text):

Paragraph 1- point c - point iii:

- iii. to ensure that European citizens' personal flow globally in full compliance with the data protection and security rules in force in Europe; to ensure that citizens remain in control of their own data; to reject, therefore, any 'catch-all' provisions on data flows which are disconnected from any reference to the necessary compliance with data protection standards; ~~to mirror the language used in the WTO Understanding on financial services;~~

Comments: The wording used in **LIBE 1 c)** is preferable. Alternatively, **“globally” and “and security”** should be deleted.

Personal data flows should only be allowed to TiSA countries whose level of protection of fundamental rights and freedoms is in full compliance with EU Data protection law. Usually, national security is used as an excuse to override fundamental rights safeguards. This was part of the US proposal in TiSA, which was rejected by LIBE in both its opinions on TTIP and TiSA.

 **RECONSIDER CAM 35: EPP, ECR, ALDE**

(Covers AMs 355 (ECR); 354, 356 (ALDE); original text):

Paragraph 1- point c - point iv:

iv. ***to consider that a clearly-defined and mutually-agreed legal framework guarantees swift exchanges of information when necessary to meet security threats; to ensure that GATS Article XIV Bis is replicated in TiSA core text;*** to ensure that national security clauses are grounded in appropriate necessity criteria; to firmly reject, ~~therefore~~ ***however***, any extension of the scope of the national security exemption enshrined in GATS Article XIVa ***Bis as well as any backdoors in technologies; to immediately and formally oppose such proposals in TiSA;***

Comments: The first part of this compromise is very bad. It contradicts the second part of the compromise, which states that national security exception in GATS XIV Bis should be narrowed down and not used as a blanket restriction on fundamental rights and freedoms, such as data protection and the right to privacy. We thus suggest you **delete “to consider that a clearly-defined and mutually-agreed legal framework guarantees swift exchanges of information when necessary to meet security threats; to ensure that GATS Article XIV Bis is replicated in TiSA core text;”**.

 **RECONSIDER CAM 36: EPP, ECR, ALDE, supported by S&D**

(Covers AMs 322 (MEP Fjellner); 327, 333 (ALDE); 359 (MEP Charanzova); 364 (ECR), original text):

Paragraph 1- point c - point v:

v. to recognise that digital innovation is a driver of economic growth and productivity in the entire economy; to recognise ~~the need for~~ ***that data flows are a crucial driver of the services economy, an essential element of the global value chain of traditional manufacturing companies and critical for the development of the Digital Single Market;*** to seek, therefore, a comprehensive prohibition of forced data localisation requirements ***and to ensure that TiSA contains future-proof rules and prevents fragmentation of the digital world;***

to consider that forced localisation requirements, forcing service suppliers to use local

infrastructure or establish a local presence as condition of supplying services, deter foreign direct investment from and to a party; therefore to make best endeavours to curb such practices to the extent possible within and outside Europe, while accommodating for necessary exemptions based on legitimate public purposes such as consumer protection;

Comments: The compromise is almost perfect. We suggest deleting "for" before "necessary exemptions" (linguistic mistake) and adding "and protection of fundamental rights" at the end, right after "such as consumer protection".


 **RECONSIDER CAM 37: EPP, ALDE, GUE, Greens, EFDD, LIBE Committee**

(Covers AMs 332, 348, 352, 369 (EFDD); 345, 347, 353, 365, 368 (GUE); 346, 367, (Greens); 371 (MEP Fjellner); 372 (ALDE); LIBE 1 (c), (e); original text):

Paragraph 1- point c - point vi:

vi. to ensure that the provisions of the final agreement are consistent with existing and future legislation at EU level, including the ~~Connected Continent Package~~ **the EU Regulation on a European single market in electronic communications**, the General Data Protection Regulation and the 16 measures embedded in the communication on the Digital Single Market; to safeguard net neutrality and *an open internet*; to guarantee that the EU retains its ability to ~~limit~~ *suspend* the transfer of *personal* data from the EU to third countries where the rules of the third party do not meet EU adequacy standards, ~~and~~ where alternative avenues, such as binding corporate rules or standard contractual clauses, are not used by companies *and where derogations listed in Article 26(1) of Directive 95/46/EC do not hold*;

Comments: The compromise is almost perfect. We'd suggest changing "General Data Protection Regulation" for "EU data protection legislation", so the E-privacy Directive is included, which is not mentioned in the CAM, and futureproof the text in case of any unforeseen developments in the Regulation. Also, we suggest deleting "an open internet", as it has no agreed meaning. If it is a synonym for "net neutrality" it is superfluous, and if it is not, then it is very unclear what it might mean.

 **RECONSIDER CAM 44: EPP, S&D, GUE, EFDD**

(Covers AMs 426 (S&D); 427 (EFDD); 430 (GUE); original text):

Paragraph 1- point e - point i:

i. to aim at reinforcing financial stability, ensuring adequate protection for consumers, *including data privacy*, and guaranteeing fair competition between financial services providers;

Comments: As per our comment on CAM 15, we suggest changing "data privacy" to "data protection and the right to privacy", in line with CAM 33.

- Telecommunications

**RECONSIDER CAM 38: EPP, S&D, EFDD, ITRE Committee**

(Covers AMs 378 (S&D); 361, 380, 381 (EFDD); *ITRE (3); (4); (5) 2nd part* original text):

Paragraph 1- point c - point vii:

- vii. *to promote rule-based competition in the telecommunications sector for the benefit of end-users*; to address persistent regulatory asymmetries regarding the telecommunications sector, by preventing parties from imposing foreign equity caps, by laying down pro-competitive wholesale access rules for incumbent operators' networks, by providing clear and non-discriminatory rules for licensing, **by securing genuine access to last mile infrastructures in export markets for EU telecom providers**, by guaranteeing the independence of regulators, and by supporting an extensive definition of telecommunications services covering all types of network; **to ensure a level playing field for all operators and that non-EU companies from oligopolistic markets do not take advantage of the fragmentation of the EU market**;

to guarantee that TISA parties respect the principle of open and non-discriminatory internet access for service providers; to guarantee that EU operators in TISA signatory countries have fair and symmetrical market access, free from any non-tariff and behind-the-border barriers, including regulatory requirements, standards asymmetry, technological impositions or restrictions;

Comments: The reference to a "level playing field" makes little sense in the context – isn't the entire purpose of the initiative to remove barriers? We thus recommend the **deletion of "to ensure a level playing field for all operators and that non-EU companies from oligopolistic markets do not take advantage of the fragmentation of the EU market"**. We would also suggest **deleting "for service providers"** in the last paragraph, as there (obviously?) be non-discriminatory internet access for everybody. It also isn't clear what a "service provider" is in this context.

- General CAMs, transparency and stakeholder participation


**SUPPORT CAM 14: EPP, S&D, ECR, ALDE, GUE, Greens, EFDD**

(Covers AMs 103, 105 (S&D); 106 (ALDE); 108 (EFDD); 110 (ECR); 109 (GUE); 112 (Greens); original text):

J. whereas citizens' trust in EU's trade policy ~~is a must, which can only be restored~~ **bolstered** by ensuring **not only beneficial outcomes in terms of employment and wealth creation for citizens and businesses, but also by guaranteeing** the highest level of transparency, **engagement and accountability**, by maintaining constant dialogue with **social partners, civil society, local and**

regional authorities and any other relevant stakeholders, and by setting clear guidelines in the negotiations;


Comments: The compromise improves the original wording of the Draft Report.

 **RECONSIDER CAM 20: EPP, ALDE, EFDD, FEMM Committee**
(Covers AMs 190, 192 (ALDE); 191 (EFDD), FEMM (8); original text):

Paragraph 1- point a - point vi:

vi. to ensure synergies **and consistency** between bilateral, plurilateral and multilateral agreements currently being negotiated, as well as with single market developments, **especially with regard to the Digital Single Market; to ensure coherence between internal and external policies and to promote an integrated approach to foreign affairs;**


Comments: Whereas consistency in EU policies is desirable, it is not clear that synergies should be sought. Trade agreements are not the place to create a policy that is already being developed within the EU. That is the case of the Digital Single Market. We thus urge you to **delete "especially with regard to the Digital Single Market"**.

 **SUPPORT CAM 53: EPP, S&D, ECR**
(Covers AMs 496 (S&D); 498 (ECR); 497 (MEPs Proust and Saifil); original text):

Paragraph 1- point g - point ii:

ii. to promote good governance and **transparency and to** foster good practices in administrative, **regulatory** and legislative processes, by encouraging the wide take-up of measures that strengthen the independence of decision-makers, increase the transparency **and democratic accountability** of decisions, and reduce red tape; to stress that consumer, **health and environmental** protection and safety **and labour rights** must be at the centre of regulatory endeavours; **to make sure that any change to EU levels of regulatory protection can only be upwards, never downwards;**

Comments: while the compromise is fine, it should push for a more ambitious compromise, including consolidated texts and the European Ombudsman's recommendations on transparency in TTIP, which should be the same as in TiSA.

 **RECONSIDER CAM 61: EPP, S&D, ECR, ALDE, LIBE and FEMM Committees**
(Covers AMs 560, 567 (S&D), 573, 575 (ALDE); 562, 570 (ECR); LIBE 1(f); FEMM (15) 1st part; original text):


Paragraph 1- point h - point ii:

ii. **to keep the European Parliament fully informed on an immediate basis at all stages of**

the negotiations; to ensure that the members of Parliament's Committee on International Trade receive all the negotiating documents related to TiSA *as well as the European Commission internal documents, such as detailed summaries of negotiating rounds and thorough assessments of TiSA parties' offers, provided that due confidentiality is ensured;*

in line with the WTO policy as well as the limitations enshrined in the EU's acquis, in particular in Regulation 1049/2001 on access to documents, to make negotiating documents public to the extent that it does not undermine the EU's negotiating position;


Comment: We suggest changing "Parliament's Committee on International Trade" to "the European Parliament", as done in TTIP. We also suggest deleting "to make negotiating documents public to the extent that it does not undermine the EU's negotiating position", as this argumentation was contested by the European Ombudsman in its recommendations regarding the TTIP negotiations. Ultimately, the Commission can unilaterally block any transparency on this basis.

 **SUPPORT CAM 62: EPP, ECR**
(Covers AMs 574 (ECR); original text):

Paragraph 1- point h - point iii:

- iii. to welcome the substantial push for **public** transparency ~~vis-à-vis the public~~ since the 2014 European elections, including the publication of EU market access offers and the mandate granted by the Council; to further these efforts by providing fact sheets **explaining in a clear and comprehensible way** for each part of the agreement and by publishing factual round-by-round feedback reports on the Europa website;


Comments: CAM 62 is not bad per se, but the text could be more ambitious vis-à-vis transparency. "Public transparency" has no obvious meaning. "Transparency vis-a-vis the public is not elegant, but has a much clearer meaning.

 **SUPPORT CAM 63: EPP, S&D, ALDE, GUE, REGI and FEMM Committees**
(Covers AMs 580 (S&D); 583 (MEPs De Sarnez and Saifi); 582 (GUE); REGI (9) 2nd part; FEMM (15) 3rd part; original text):

Paragraph 1- point h - point iv:


- iv. to ~~welcome~~ **ensure serious and** the continuous engagement of the EU institutions with a wide range of **all relevant** stakeholders throughout the negotiation process; **to call for this engagement to be intensified as the negotiations progress, so that the expectations of European civil society, social partners and other stakeholders are**

adequately taken into account; to welcome the establishment of a Civil Society Dialogue;

 **SUPPORT CAM 64: EPP, GUE, Greens, EFFD, REGI and FEMM Committees**
(Covers AMs 569 (MEP Belet); 584 (Greens); 586 (GUE); 588 (EFFD); REGI (9) 1st part; FEMM (15) 2nd part; original text)

Paragraph 1- point h - point v:

- v. to encourage the Member States to involve **and consult** their national parliaments **as well as local and regional authorities** and to keep them adequately informed about the ongoing negotiations;

 **SUPPORT CAM 65: EPP, S&D**
(Covers AMs 599 (S&D); original text):

Paragraph 2:

2. Instructs its President to forward this resolution containing the European Parliament's recommendations to the Commission and, for information, to the Council, the governments and parliaments of the Member States and to the administrations and parliaments of all TiSA Parties.

Requests the European Commission to take fully into account the present recommendations and to provide a response to this resolution within six months of its adoption;