



SPEECH BY EDRi's EXECUTIVE DIRECTOR, JOE McNAMEE, at INTA's public hearing on "International digital trade in good and services"

European Digital Rights (EDRi) is an umbrella organisation of over 30 members active in nineteen European countries and abroad. EDRi works to support the respect and enhancement of fundamental rights. We see the internet as an enabler of fundamental rights, such as freedom of expression and the right to privacy.

We see privacy and freedom of expression as crucial aspects of digital policy. Furthermore, good trade policy can and should enhance these fundamental rights.

As this is a very broad area, I will restrict myself to two areas that are currently at stake in several trade discussions:

- Open telecommunications markets.
- Protection of personal data

1. Open telecommunications markets – a European success story

In one of the first statements made by Commissioner Jonathan Hill, he paid tribute to the **success of liberalisation in European telecommunications markets** and looked to extend this positive experience.¹ He was completely right. Every single European citizen has a better choice of better services at a lower cost thanks to the European Union's success.

During my lifetime, I saw telecommunication services in my little village, not far from our EPP

¹ "Think about telecommunication, where liberalisation has brought huge benefits, both for "domestic" and for "cross-border" customers and businesses." cf. http://www.europa-nu.nl/id/vjozg0yv47w4/nieuws/speech_turning_around_the_telescope?ctx=vjn54o3z0czy&v=1&tab=1&start_tab0=5



Prime Minister Enda Kenny's home, change from a wind-up phone in the local post office to, now, a choice of high quality telephony and broadband services.

This is Ireland's, but also Europe's success.

Learning from this success is how we achieve the aim in paragraph D of the Parliament's TISA resolution "D. whereas any trade agreement must be a market opener for our companies abroad".²

Through several telecom reviews, the EU – including the good work of this House – had the vision to see beyond short-termist Industry lobbying, creating new markets, new innovation and generating new services.

Now, deregulation is in fashion. Deregulation is being pushed with almost ideological fervour.

Regulation must be based on experience, on evidence and on the achievement of specific public policy goals, not ideological fervour

"From now on our actions must be more geared more toward allowing companies to make fair profits", Commissioner Günther Oettinger reportedly said.³ No!

- If Europe fails to give itself credit for the huge success of its telecommunications policy,
- If Europe domestically fails to maintain its successful policies,
- If Europe follows an ideologically-driven deregulatory agenda in trade agreements,

...then Europe will undermine the competitiveness of domestic players and fail to allow European telecoms and online services to benefit from open and competitive markets.

II. Protection of personal data – another European success story

Europe's dedication to the protection of privacy and data protection has long been a **global standard-setter**.

It has helped create trust, it has helped innovation and it has helped inspire good practice elsewhere in the world.

Now, there is an almost ideological drive towards weakening data protection standards, towards ensuring that privacy does not get in the way of innovation. "Free flow of data" is a mantra that confuses flows of data where there are simply no barriers in the first place (such as industrial data) and data for which the legal framework is already clear, personal data.

² <https://edri.org/tisa-resolution-document-pool/>

³ <http://www.telecomtv.com/articles/policy-and-regulation/back-to-the-future-oettinger-sounds-like-neelie-phase-one-11868/>



The mantra is that we need to ensure innovation. But what if, as the full ramifications of the internet of things become felt, *lack* of data protection and privacy are a barrier to innovation and competition?

Imagine if trade deals contained enough so-called "flexibility" that a race to the bottom was inevitable.

I would like to draw two facts to your attention:

A recent US Department of Commerce study⁴ showed that;

Forty-five percent of online households reported that privacy and security concerns stopped them from conducting financial transactions, buying goods or services, posting on social networks, or expressing opinions on controversial or political issues via the Internet. 30 percent refrained from at least two of these activities. Privacy and security concerns deterred each of these important activities in millions of households. This is a barrier to domestic US trade, it is a barrier to European companies trying to get into the market. Privacy is not a barrier to trade. Not protecting privacy is a barrier to trade.⁵

Despite this, according to the International Trade Commission's study on digital trade in the US and global economies, the US has a "particular concern" with regard to EU data protection requirements, due to their "strictness and difficulty to comply with", and therefore it highlights recommendations for "interoperability".⁶

Europe has successfully adopted a comprehensive, horizontal Regulation that is fit for the digital age, the General Data Protection Regulation. Berlin, the capital of the country with some of the most sophisticated rules on data protection, has a flourishing start-up industry, including for health innovation. 1.21 start-ups per 100 inhabitants.⁷

That's huge. That's Berlin's and Germany's achievement. That's also Europe's achievement.

Conclusion

In telecommunications negotiations – as well as in domestic policy development – Europe must remain strong in its defence of its positive experiences. The ideological drive for deregulation must be resisted. Principles such as net neutrality – for which the Parliament voted seven times in the

4 <https://www.ntia.doc.gov/blog/2016/lack-trust-internet-privacy-and-security-may-deter-economic-and-other-online-activities>

5 However, the US, contrary to the study referred to in footnote 4, has explicitly said the opposite: <https://ustr.gov/sites/default/files/2016-NTE-Report-FINAL.pdf>

6 <https://iapp.org/news/a/notes-from-the-iapp-europe-managing-director-july-3-2015/>

7 https://www.berlin.de/rbmskzl/_assets/aktuelles/2014/oktober/140911_berlin_erfolgsgeschichte_2014_engl.pdf



past seven years (which may well be a unique achievement!) must be defended in particular.

In discussions around “free flows of data”, European fundamental rights must be defended. A rights (and trade) destructive regime that permits a race to the bottom, to the detriment of citizens' trust must be avoided. **The European Parliament's resolutions on TTIP and TiSA rightly recall that privacy and data protection are fundamental rights, not barriers to trade. In addition, the Parliament also called for a self-standing clause to protect data protection and privacy. This is the right approach.**

Finally, on online enforcement, using liability or “voluntary measures” by internet companies will mean that each online activity would be threatened by the possibility of punitive actions by multiple service providers in multiple jurisdictions on the basis of multiple legal frameworks. This is NOT how barriers to trade are reduced!

Thank you very much for your attention and consideration.

For more information of EDRI's recommendations on trade agreements and digital policy, we invite you to take into consideration:

- **Brussels' Trade Declaration on Trade:**
<https://edri.org/rights-must-not-be-abandoned-in-trade-negotiations/>
- **European Digital Rights' red lines on TTIP:**
https://edri.org/files/TTIP_redlines_20150112.pdf
- **EDRI's Booklet on TTIP and Digital Rights:**
https://edri.org/files/TTIP_and_DigitalRights_booklet_WEB.pdf
- **EDRI's analysis of the recent TTIP leaks:**
<https://edri.org/breaking-ttip-leaks-confirm-dangers-for-digital-rights/>
- **TTIP's resolution: EDRI's document pool:**
<https://edri.org/ttip-resolution-docpool/>
- **EDRI's position on the Trade and Services Agreement (TiSA):**
https://edri.org/files/TiSA_Position_Jan2016e.pdf
- **TiSA's resolution: EDRI's document pool:**
<https://edri.org/tisa-resolution-document-pool/>

We will be soon publishing our position on the Comprehensive Economic and Trade Agreement (CETA) on our website.

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