



**2015/2233(INI)**

25.9.2015

# **DRAFT REPORT**

containing the European Parliament's recommendations to the Commission on the negotiations for the Trade in Services Agreement (TiSA)  
(2015/2233(INI))

Committee on International Trade

Rapporteur: Viviane Reding

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### containing the European Parliament's recommendations to the Commission on the negotiations for the Trade in Services Agreement (TiSA) (2015/2233(INI))

*The European Parliament,*

- having regard to the General Agreement on Trade in Services (GATS)<sup>1</sup>, which entered into force in January 1995 as a result of the Uruguay Round negotiations in the framework of the WTO,
- having regard to the report of 21 April 2011 by the chair of the WTO's Council for Trade in Services, Ambassador Fernando de Mateo, to its Trade Negotiations Committee concerning the special session of negotiations on trade in services<sup>2</sup>,
- having regard to the statement issued by the 'Really Good Friends of Services' (RGF) group on 5 July 2012<sup>3</sup>,
- having regard to the EU directives for the negotiations for a Trade in Services Agreement (TiSA), adopted by the Council on 8 March 2013 and declassified and made public by the Council on 10 March 2015<sup>4</sup>,
- having regard to its resolution of 4 July 2013 on the opening of negotiations on a plurilateral agreement on services<sup>5</sup>,
- having regard to President Juncker's political guidelines of 15 July 2014, addressed to the new Commission and entitled 'A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change',
- having regard to the Final Inception Report of 17 July 2014, drawn up for the Commission by Ecorys and entitled 'Trade Sustainable Impact Assessment in support of negotiations on a plurilateral Trade in Services Agreement (TiSA)'<sup>6</sup>,
- having regard to the negotiating documents tabled by all TiSA parties, in particular those declassified and made public by the Commission on 22 July 2014, including the EU's initial offer<sup>7</sup>,
- having regard to Article 39 of the Treaty on European Union, Article 8 of the Charter of Fundamental Rights of the European Union on protection of personal data, and Article 12 of the Universal Declaration of Human Rights,

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<sup>1</sup> [https://www.wto.org/english/docs\\_e/legal\\_e/26-gats\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm)

<sup>2</sup> TN/S/36

<sup>3</sup> [http://eeas.europa.eu/delegations/wto/press\\_corner/all\\_news/news/2012/20120705\\_advancing\\_negotiations\\_services.htm](http://eeas.europa.eu/delegations/wto/press_corner/all_news/news/2012/20120705_advancing_negotiations_services.htm)

<sup>4</sup> <http://www.consilium.europa.eu/en/press/press-releases/2015/03/150310-trade-services-agreement-negotiating-mandate-made-public/>

<sup>5</sup> Texts adopted, P7\_TA(2013)0325.

<sup>6</sup> [http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc\\_152702.pdf](http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152702.pdf)

<sup>7</sup> [http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc\\_152702.pdf](http://trade.ec.europa.eu/doclib/docs/2014/july/tradoc_152702.pdf)

- having regard to Articles 14 and 106 of and Protocol 26 to the Treaty on the Functioning of the European Union on services of general interest,
  - having regard to Commissioner Malmström’s statement of 5 February 2015 on patient mobility in TiSA<sup>8</sup>,
  - having regard to the EU-US joint statement of 20 March 2015 on public services<sup>9</sup> in the context of the TiSA and TTIP negotiations,
  - having regard to Article 21 TEU,
  - having regard to Rules 108(4) and 52 of its Rules of Procedure,
  - having regard to the report of the Committee on International Trade and the opinions of the Committee on Development, the Committee on Economic and Monetary Affairs, the Committee on Employment and Social Affairs, the Committee on the Internal Market and Consumer Protection, the Committee on Transport and Tourism, the Committee on Regional Development, the Committee on Civil Liberties and the Committee on Women’s Rights and Gender Equality (A8-0000/2015),
- A. whereas the TiSA negotiations are aimed at achieving better international regulation, not lower domestic regulation;
  - B. whereas any trade agreement must provide more rights and lower prices to European consumers and level the playing field for European companies;
  - C. whereas any trade agreement must be a market opener for our companies abroad and a safety net for our citizens at home;
  - D. whereas the globalisation, servicification and digitalisation both of our economies and of international trade call for policy action to enhance international rules;
  - E. whereas TiSA is an opportunity for the EU to consolidate its position as the world leader in the field, with 24 % of global trade in services;
  - F. whereas trade in services is an engine for jobs and growth in the EU;
  - G. whereas numerous barriers to trade in services, which if translated into equivalent tariffs amount to 15 % for Canada, 16 % for Japan, 25 % for South Korea, 44 % for Turkey and 68 % for China, continue to prevent European companies from reaping the full benefits of their competitiveness; whereas the EU, where the tariff equivalent of services restrictions is only 6 %, is substantially more open than most of its partners;
  - H. whereas non-tariff barriers, which on average represent more than 50 % of the cost of cross-border services, disproportionately affect small and medium-sized enterprises, which often lack the human and financial resources necessary to overcome those obstacles; whereas the elimination of unnecessary barriers would facilitate their internationalisation;

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<sup>8</sup> <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1254>

<sup>9</sup> [http://trade.ec.europa.eu/doclib/docs/2015/march/tradoc\\_153264.pdf](http://trade.ec.europa.eu/doclib/docs/2015/march/tradoc_153264.pdf)

- I. whereas the globalisation of value chains increases the import content of both domestic output and exports;
- J. whereas citizens' trust in EU's trade policy is a must, which can only be restored by ensuring the highest level of transparency, by maintaining constant dialogue with civil society, and by setting clear guidelines in the negotiations;
- 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;
1. Addresses, in the context of the ongoing negotiations on the Trade in Services Agreement, the following recommendations to the Commission:
- (a) *regarding context and scope:*
- i. to consider the TiSA negotiations as a stepping-stone towards renewed ambitions at WTO level;
  - ii. to reiterate its support for a comprehensive and balanced agreement, which should unleash the untapped potential of a more integrated global services market, while fully guaranteeing compliance with the EU acquis; to shape globalisation and to create international standards, while fully preserving the right to regulate; to secure increased market access for European services suppliers in key sectors of interest, while accommodating specific carve-outs for sensitive sectors;
  - iii. to push for multilateralisation by crafting GATS-compatible provisions and by accepting new parties conditional on their acceptance of the agreed rules and level of ambitions; to incentivise wider participation in the talks by granting interested parties observer status; to note that both the highest barriers and the highest growth potential regarding trade in services are to be found in the BRICS and the MINT countries; to recognise the importance of those countries for the EU, as export destinations with a rising middle class, as sources of intermediate inputs and as key hubs in global value chains; to open the way for the participation of China;
  - iv. to carry out the negotiations on a preferential basis and to limit the benefits of the agreement to TiSA parties until it is multilateralised;
  - v. to reinvigorate the discussions on services in the Doha Development Round;
  - vi. to ensure synergies between bilateral, plurilateral and multilateral agreements currently being negotiated, as well as with single market developments;
  - vii. to propose specific safeguards for tourists, inter alia in order to strengthen passenger rights, to make international roaming fees transparent, and to limit the abusive fees charged to consumers using their credit cards outside Europe;
  - viii. to publish a sustainability impact assessment and, once the negotiations are finalised, to update it accordingly, taking specific account of its impact on citizens

and workers; to request Parliament's research services to publish a comprehensive and informative study of the scope and potential impact of the TiSA negotiations;

(b) *regarding market access:*

- i. to exclude public services and cultural services from the scope of the negotiations, and to seek the further opening of foreign markets in telecommunications, transport and professional services;
- ii. to ensure reciprocity at all levels; to condition any further commitments beyond the EU's current level of openness on the other parties' proportionate offers; to support the use of horizontal commitment-related provisions as a means to set a common level of ambitions, and to take note that such minimum requirements would set clear parameters for countries interested in participating;
- iii. to exclude the provision of new services from the EU's commitments;
- iv. to acknowledge that standstill and ratchet clauses do not apply to market access commitments;
- v. to undertake limited commitments in Mode 1 so as to avoid regulatory arbitrage and social dumping; to ensure that European rules are fully respected when a company provides a service from abroad to European consumers;
- vi. to take an ambitious approach in Mode 3 by seeking the removal of third-country barriers to establishment, such as foreign equity caps and joint venture requirements;
- vii. to take a cautious approach in Mode 4, while bearing in mind that the EU has an offensive interest in the inward and outward movement of highly-skilled labour; to acknowledge that the labour clause maintains the legal obligation of foreign service providers to comply with EU and Member State social and labour legislation, as well as with collective agreements; to enter into ambitious commitments for those cases which underpin Mode 3 commitments;
- viii. to acknowledge that by means of limitations and exemptions, each Party retains the sovereign right to choose which sectors to open to foreign competition and to what extent;
- ix. to exclude, in line with Articles 14 and 106 of as well as protocol 26 to the TFEU, current and future Services of General Interest as well as Services of General Economic Interest from EU commitments (including but not limited to water, health, social services, social security systems and education); to ensure that European, national and local authorities retain the full right to introduce, adopt, maintain or repeal any measures with regard to the commissioning, organisation, funding and provision of public services; to apply this exclusion irrespective of how the public services are provided and funded; to acknowledge that social security systems are excluded from the negotiations;
- x. to introduce an unequivocal 'gold standard' clause, which could be included in all

trade agreements and would clarify that the public utilities clause applies to all modes of supply and to any services considered as public services by European, national or regional authorities;

- xi. to ensure, in line with Article 167(4) TFEU and with the UNESCO Convention on the protection and promotion of the diversity of cultural expressions, that the parties preserve their right to adopt or maintain any measure with respect to the protection or promotion of cultural and linguistic diversity; to explicitly exclude audiovisual services, media and publishing from the scope of the agreement, irrespective of the technology or distribution platform used;

(c) *regarding rules on the digital economy:*

- i. to ensure cross-border data flows in compliance with the universal right to privacy;
- ii. to acknowledge that data protection is not a trade barrier, but a fundamental right, enshrined in Article 39 TEU and Article 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 GATS Article XIV, which fully exempts the existing and future EU legal framework for the protection of personal data from these negotiations, will be replicated in the TiSA core text;
- iii. to ensure that European citizens' personal data 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;
- iv. to ensure that national security clauses are grounded in appropriate necessity criteria; to firmly reject, therefore, any extension of the scope of the national security exemption enshrined in GATS Article XIVa ;
- v. to recognise that digital innovation is a driver of economic growth and productivity in the entire economy; to recognise the need for data flows; to seek, therefore, a comprehensive prohibition of forced data localisation requirements;
- 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 General Data Protection Regulation and the 16 measures embedded in the communication on the Digital Single Market; to safeguard net neutrality and to guarantee that the EU retains its ability to limit the transfer of 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;
- vii. 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 guaranteeing the independence of regulators, and by supporting an extensive definition of telecommunications services covering all types of network;

- viii. to strongly support provisions on international mobile roaming; to increase publicly available information regarding retail rates in the short run; to make the case for maximum caps in the long run; to push for online consumer protection, in particular vis-à-vis unsolicited commercial electronic messages;

*(d) regarding rules on mobility:*

- i. to ensure that nothing will prevent the EU and its Member States from maintaining and applying their labour and social regulations, as well as their legislation on entry and temporary stay;
- ii. to recall that Mode 4 commitments only apply to the movement of high-level professionals for a specific purpose, for a limited period of time and under precise conditions stipulated by a contract and by domestic legislation;
- iii. to recognise this chapter as an offensive interest for Europe, given that EU professionals are well-educated and mobile and that EU companies increasingly require the specific skills of foreign professionals inside Europe and their personnel outside Europe, in order to support the establishment of new business activities;
- iv. to oppose any provisions regarding visas and other entry procedures except those aimed at increasing transparency and streamlining administrative procedures; to set requirements to ensure that temporary service providers return home;
- v. to seek to horizontally prohibit the requirement of establishing a commercial presence, or of being a resident, as a condition for providing professional services; to limit the scope of the Annex on professional services to the list of commitments made by each Party;
- vi. to strive for the mutual recognition of training, academic levels and professional qualifications, in particular in the architectural, accounting and legal sectors, while ensuring the competence of the supplier and thus the quality of the services provided;

*(e) regarding rules on financial services:*

- i. to aim at reinforcing financial stability, ensuring adequate protection for consumers and guaranteeing fair competition between financial services providers;
- ii. to step up the implementation and application of international standards for the regulation and supervision of the financial sector, such as those endorsed by the G20, the Basel Committee on Banking Supervision, the Financial Stability Board, the International Organisation of Securities Commissions and the International Association of Insurance Supervisors; to bind TiSA parties not signatory to the



WTO Understanding on Financial Services to equivalent rules;

- iii. to replicate the GATS prudential carve-out so as to allow parties to deviate from their trade commitments when this is necessary for prudential reasons;
- iv. to ensure that this agreement does not limit the EU's ability to ban certain financial products in line with its regulatory framework;
- v. while stressing the need to increase worldwide access to financial services, to exclude cross-border financial services from the EU's commitments until there is convergence in financial regulation at the highest level, except in very limited and justified cases;

(f) *regarding rules on logistics:*

- i. to ensure a high level of ambition in the transport sector, which is critical to the development of global value chains; to increase the speed, reliability, security and interoperability of transport services, to the benefit of business customers and individual users;
- ii. to seek improved access to foreign markets and a reduction in anti-competitive regulatory practices, most importantly those which are harmful to the environment and reduce the efficiency of transport services; to address restrictions in the cabotage sector and to avoid carriers returning empty from their host country, in particular in the Annex on maritime transport;
- iii. to put forward provisions aimed at strengthening passenger rights, in particular in the Annex on air transport;
- iv. to exclude any provisions facilitating the entry and stay of professional drivers from the scope of the Annex on road transport;
- v. to ensure consistency with international standards, such as those endorsed by the International Maritime Organisation and the International Civil Aviation Organisation, and to oppose any lowering of these international benchmarks;
- vi. to strike the right balance between the liberalisation of the competitive postal sector and the protection of national monopolies; therefore to prevent anti-competitive cross-subsidisation and to ensure the recognition of universal service obligations as defined by each party;

(g) *regarding rules on domestic regulation and transparency:*

- i. to fully preserve European, national and local authorities' right to regulate;
- ii. to promote good governance and foster good practices in administrative and legislative processes, by encouraging the wide take-up of measures that strengthen the independence of decision-makers, increase the transparency of decisions, and reduce red tape; to stress that consumer protection and safety must be at the centre of regulatory endeavours;

- iii. to recognise that the domestic regulation chapter is necessary to prevent parties from implementing disguised trade barriers and imposing unnecessary burdens on foreign companies, in particular when they apply for different types of permits;
  - iv. to ensure that agreed rules apply only to trade-related measures, such as qualifications and licensing requirements and procedures, and only in sectors where a party has undertaken commitments;
  - v. to request and publish a legal opinion prior to Parliament's vote on the final agreement, with a view to thoroughly assessing the two Annexes on domestic regulation and transparency in light of EU law, EU principles and international jurisprudence, and to assess whether the legal obligations set in these chapters are already respected in the EU;
  - vi. to clearly define the law-making principles of transparency and objectivity so as to ensure that these concepts do not turn into catch-all provisions;
  - vii. to make information on trade-related regulations and how they are administered publicly available online; to place the emphasis on rules governing licensing and authorisations; to specifically push for the creation of a web-based one-stop shop information mechanism for SMEs;
  - viii. to ensure that administrative fees charged to foreign companies are fair, that remedies making it possible to file a complaint in national courts exist, and that rulings are delivered in a reasonable period of time;
  - ix. to maintain the EU practice of carrying out public consultations prior to legislative proposals;
  - x. to oppose any proposals calling for the mandatory submission of legislative proposals to third parties prior to their publication;
- (h) *regarding rules contained in other regulatory disciplines:*
- i. to acknowledge that TiSA is an opportunity to ensure competition by the rules, not for the rules;
  - ii. to endeavour to include a regulatory chapter on government procurement with a view to maximising the participation of European companies in foreign tenders; to deplore the lack of transparency regarding non-European calls for tenders and to denounce the lack of reciprocity in this area, as illustrated by the preferential treatment granted to domestic companies in several countries; to encourage the ratification and implementation of the WTO Government Procurement Agreement and its 2011 revision; to call upon the Member States to reinvigorate discussions on the proposed international public procurement instrument;
  - iii. to lower barriers to trade in energy- and environment-related services, given that an increasing number of services, such as installation, management and repairs, are sold together with products in these two areas; to acknowledge the explicit recognition of each party's sovereignty over energy resources and to preserve the

EU's right to regulate, in particular so as to meet the European objectives of sustainability, security and affordability;

(i) *regarding public and political outreach:*

- i. to ensure the highest level of transparency, dialogue and accountability;
  - ii. to ensure that the members of Parliament's Committee on International Trade receive all the negotiating documents related to TiSA;
  - iii. to welcome the substantial push for 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 for each part of the agreement and by publishing factual round-by-round feedback reports on the Europa website;
  - iv. to welcome the continuous engagement of the EU institutions with a wide range of stakeholders throughout the negotiation process;
  - v. to encourage the Member States to involve their national parliaments and to keep them adequately informed about the ongoing negotiations;
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 the administrations and parliaments of all TiSA Parties.

## EXPLANATORY STATEMENT

The European Parliament plays a decisive role in EU's trade policy. Pursuant to Article 218 of the Treaty on the Functioning of the European Union, not only its Members have the final say on trade agreements, they also have to be immediately and fully informed at all stages of the procedure of negotiating and concluding trade agreements, in order to exercise a continued oversight over trade negotiations.

With the view to shape their course, this House is entitled to express its position throughout the process. Accordingly, by means of a report based on Rule of Procedures 108(4), your Rapporteur would like to assess the first two years and half and thirteen rounds of negotiations on the Trade in Services Agreements (TiSA) and to draw up clear and solid recommendations to the European Commission.

According to the Rapporteur, TiSA negotiations must ensure more reciprocity in market access, create a global level playing field, provide tangible benefits to consumers and grant access to the talks to interested parties so as to facilitate future multilateralisation. However, public and cultural services, fundamental rights to data privacy and fair working conditions, and the right to regulate are non-negotiable and should be unequivocally excluded from the scope of the agreement.

TiSA cannot be labelled as cure or curse before it is finalised. Instead, the European Parliament must work constructively and pragmatically to positivise, demystify and prioritise TiSA negotiations so as to ensure that a good agreement is reached, in the interest of European companies and consumers alike. TiSA will be balanced, or it will simply not be.