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Committee on Civil Liberties, Justice and Home Affairs

2015/2233(INI)

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DRAFT OPINION

of the Committee on Civil Liberties, Justice and Home Affairs

for the Committee on International Trade

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

Rapporteur: Jan Philipp Albrecht

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SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on International Trade, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- having regard to the Council negotiating directives for the Trade in Services Agreement (TiSA)¹,
- A. whereas the Union is bound by the Charter of Fundamental Rights of the European Union (the Charter), including Article 8 thereof on the right to the protection of personal data, and by Article 16 of the Treaty on the Functioning of the European Union (TFEU) on the same fundamental right, as a key pillar of EU primary law which must be fully respected by all international agreements;
- B. whereas the Union is bound by Article 2 of the Treaty on European Union (TEU), *inter alia*, to uphold the values of democracy and the rule of law;
- C. whereas the Union is bound by Articles 20 and 21 of the Charter to uphold the principles of equality before the law and freedom from discrimination;
- D. whereas Articles 1 and 10(3) TEU both stipulate that decisions must be taken as openly and as closely as possible to the citizen; whereas transparency and open dialogue between the partners, including citizens, are of the utmost importance during the negotiations and also in the implementing phase; whereas Parliament endorses the Ombudsman's call for a transparent approach;
- E. whereas ongoing negotiations on international trade agreements, including the Trade in Services Agreement (TiSA), also touch upon international data flows while excluding privacy and data protection entirely, which will be discussed in parallel;
- F. whereas the draft US text on e-commerce for the TiSA would undermine EU rules and safeguards for the transfer of personal data to third countries; whereas Parliament reserves the right to express its opinion after consulting any future text proposals and drafts of the TiSA agreement;
- 1. Addresses the following recommendations to the Commission:
 - (a) to ensure that the agreement guarantees full respect for EU fundamental rights standards through the inclusion of a legally binding and suspensive human rights clause as a standard part of EU trade agreements with third countries;
 - (b) to incorporate, as a key priority, a comprehensive and unambiguous horizontal self-standing provision, based on Article XIV of the General Agreement on Trade in Services (GATS), that fully exempts the existing and future EU legal framework for the protection of personal data from the agreement, without any condition that it must be consistent with other parts of the TiSA, and to ensure that the agreement does not preclude the enforcement of exceptions for the supply of services which are justifiable

¹ Council Document 6891/13 ADD 1.

under the relevant World Trade Organisation rules (Articles XIV and XIVbis of the GATS);

- (c) to ensure that personal data can be transferred outside the Union only if the provisions on third-country transfers in EU data protection laws are complied with; to negotiate on provisions which touch upon the flow of personal data only if the full application of EU data protection rules is guaranteed and respected;
- (d) to oppose the provisions with regard to the protection of personal data in the US draft TiSA chapter on e-commerce;
- (e) to keep in mind that EU rules on the transfer of personal data may prohibit the processing of such data in third countries if they do not meet the EU adequacy standard; to insist that any requirements for the localisation of data processing equipment and establishments be in line with EU rules on data transfers; to cooperate with third countries in the appropriate settings with a view to adopting adequate high data protection standards around the world;
- (f) to show full regard for the need for transparency and accountability in the negotiations throughout the entire process, and to fulfil its obligation under Article 218(10) TFEU, which a recent Court of Justice ruling confirmed as being of statutory character¹, to keep Parliament fully informed on an immediate basis at all stages of the negotiations; to ensure public access to relevant negotiation documents from all parties, with the exception of those which are to be classified with clear justification on a case-by-case basis, with a public justification of the extent to which access to the undisclosed parts of the document in question is likely to specifically and actually undermine the interests protected by the exceptions, in line with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents²; to ensure that the agreement in no way weakens the laws of the EU or of its Member States on public access to official documents.

¹ Case C-658/11 *Parliament v Council*, judgment of 24 June 2014.

² OJ L 145, 31.5.2001, p. 43.