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PROPOSAL FOR AMENDMENTS

Recommendations to the European Commission on the negotiations for the TTIP



EUROPEAN CENTER FOR EMPLOYERS AND ENTREPRISES PROVIDING PUBLIC SERVICES

Amendment 1 - New Recital on Service of General (Economic) Interest

Draft report

New recital

Draft report

Amendment

Whereas Services of General (Economic) Interest have a fundamental role in the EU citizens' everyday life by promoting social and territorial cohesion and are recognized as shared values in the primary EU law through article 14 and Protocol No. 26 TFEU, there is a strong need to safeguard Services of (Economic) General Interest and to make sure that the TTIP does not endanger EU's commitments in this area.

Justification

Considering the general will expressed by EU negotiators to safeguard Services of General (Economic) Interest (SG(E)I), which are essential for the well being of citizens and the European economy, it would be coherent to mention the need to safeguard these services in the recitals of the recommendations.

In addition, it is important to use the concept of **Services of General (Economic) Interest** throughout the recommendations to the Commission as it is the **European legal generic term for public services**. Services of General (Economic) Interest in Europe and their special role are recognised in the Lisbon Treaty as common constitutional EU values. Article 14 TFEU and Protocol 26 on Services of General Interest are the results of several years of difficult discussions about the definition and the role of Services of General Interest in the EU and their treatment in connection to the internal market and competition rules. The reasons are the huge varieties in organizing public services amongst the Member States as well as the importance of public services for the public opinion. The EU should not endanger this equilibrium when negotiating the TTIP.

Services of General Interests (SGIs), as referred to in Protocol No 26 to the TFEU “*are services that public authorities of the Member States classify as being of general interest and, therefore, subject to specific public service obligations (PSO). The term covers both economic activities (see the definition of SGEI below) and non-economic services. The latter are not subject to specific EU legislation and are not covered by the internal market and competition rules of the Treaty*”. (Communication of the Commission on A Quality Framework for Services of General Interest in Europe, 20.12.2011)

Article 14 together with the other provisions in the Treaty concerning SGIs (Protocol No 26, Charter of Fundamental Rights) has come to offer a stronghold basis to secure Services of General Interest, their objectives and their varied forms of organisation. In particular, they reaffirm "the competence of Member States to provide, commission and organise such services".

Amendment 2 - Positive list approach for market access and national treatment**Draft report****Paragraph (iv)***Draft report*

(iv) to increase market access for services according to the 'positive list approach' whereby services that are to be opened up to foreign companies are explicitly mentioned and new services are excluded while ensuring that possible standstill and ratchet clauses only apply to non-discrimination provisions and allow for enough flexibility to bring services back into public control;

Amendment

(iv) to increase market access **and national treatment** for services according to the 'positive list approach' whereby services that are to be opened up to foreign companies are explicitly mentioned and new services are excluded while ensuring that possible standstill and ratchet clauses only apply to non-discrimination provisions and allow for enough flexibility to bring services back into public control;

Justification

Considering the approach adopted in TiSA the European Commission might adopt a hybrid approach in the area of services in the TTIP as well, whereby a positive list approach would apply for market access (opening to foreign companies) and a negative list approach would apply for national treatment (no discrimination towards foreign companies). Therefore it is important to insist that the positive approach should apply both to market access and national treatment requirements.

Given the huge varieties of SG(E)I and their changing nature, a negative-list approach which would require an exhaustive listing of all existing and future exemptions would put at risk the safeguard of SG(E)Is.

Amendment 3 - Explicitly exclude SG(E)I from market access provisions

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Paragraph 1 b vi and vi bis

Draft report

(vi) to ensure an **adequate** carve-out of sensitive services such as public services and public utilities (including water, health, social security systems and education) allowing national and local authorities enough room for manoeuvre to legislate in the public interest; a joint declaration reflecting negotiators' clear commitment to exclude these sectors from the negotiations would be very helpful in this regard;

Amendment

(vi) to ensure an **explicit** carve-out of Services of General (Economic) Interest as referred to in Article 14 TFEU from the scope of application of TTIP on market access, in order to ensure that national and local authorities have the freedom to introduce, adopt, maintain or repeal any measure with regard to the commissioning, organisation, funding and provision of public services, as provided in Article 168 TFEU (public health) and in Protocol 26 (Services of General Interest) of the EU Treaties.

This exclusion should apply whether the Services of General (Economic) Interest in question are organised as a monopoly, operating under exclusive rights or otherwise, and whether publicly or privately funded and/or provided.

Such services include, among others, health and social care services, social security systems, education, water, gas and electricity services.

(vi bis) to issue a joint public EU/US declaration committing both parties to exclude Services of General (Economic) Interest from the TTIP agreement.

Justification

The “public-utility”-clause that was invented under the GATS agreement does not provide for a full exclusion of SG(E)I since there is a legal difference between “public utilities” and “services of general (economic) interest” (see introductory note). In order to make sure that those sensitive services are effectively carved out, it would be helpful to insert a reference to Services of General (Economic) Interest and have an explicit statement in the agreement.

Amendment 4 - Exclude audiovisual services from the scope of the TTIP

Draft report

Paragraph 1 (a) (v)

Draft report

(1 **(b) (x)**) to keep in mind that the agreement should not risk prejudicing the Union's cultural and linguistic diversity, including in the audiovisual and cultural services sector, and that existing and future provisions and policies in support of the cultural sector, in particular in the digital world, are kept out of the scope of the negotiations;

Amendment

(1 **(a) (v)**) to keep in mind that the agreement should not risk prejudicing the Union's cultural and linguistic diversity, including in the audiovisual and cultural services sector, and that existing and future provisions and policies in support of the cultural **and audiovisual** sectors, in particular in the digital world, are kept out of the scope of the negotiations;

Justification

For the avoidance of any doubt, CEEP would find it necessary to explicitly repeat the reference to the audiovisual sector in the second part of the paragraph. Such clarification would be helpful given the fact that the WTO Services Sectoral Classification List traditionally used for EU free trade agreements distinguishes between "Audiovisual Services", which are to be found under "Communication Services", and recreational, cultural and sporting services (other than audiovisual services) including for instance theatre, live bands and circus services.

Moreover, and most importantly, CEEP would suggest moving the entire paragraph from 1 (b) regarding market access to 1 (a) regarding the scope and the broader context: paragraph (x) indeed relates to general principles from the EU treaties and to the very scope of the negotiations. Its provisions are relevant not only for the specific market access chapter of the future TTIP agreement, but for the entire agreement including its horizontal provisions on regulatory cooperation.

Amendment 5 - Ensure the safeguard of SGEIs in competition rules

Draft report

Paragraph 1 b ix

Draft report

(ix) to ensure that European competition law is properly respected ***particularly in the digital world;***

Amendment

(xi) to ensure that European competition law is properly respected, ***notably the EU textual proposal on competition should contain an explicit transcription of article 106 TFEU, that is an exception for enterprises entrusted with the operation of SGEI where the application of competition rules would obstruct the performance of the particular task of public interest assigned to these enterprises.***

Justification

The EU textual proposals on subsidies and competition contains explicit references to SGEIs. In order to ensure that public authorities can carry out their competences with regard to SGEIs (definition, organisation, financing in line with article 14 TFEU and protocol 26), an explicit reference to article 106 needs to be included.

NB: Article 106 TFEU paragraph 2 relates to undertakings entrusted with the operation of services of general economic interests and states:

"[...] 2. Undertakings entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to the rules contained in the Treaties, in particular to the rules on competition, **in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to them. The development of trade must not be affected to such an extent as would be contrary to the interests of the Union.**[...]"

The article reflects the balance between internal market/free competition/free trade on the one hand and Member States and EU regulations intervening in the market in order to safeguard the public interest on the other hand. The primary law states a clear limit to the application of EU law: the obstruction of the performance of special tasks of SGEIs, e.g. in case of conflict the public interest shall prevail. It is essential for the safeguard of public services that the EU textual proposals on Competition and State Aid clearly preserves this "acquis" by referring to the article 106 TFEU.

Amendment 6 - Ensure the full respect of the 2014 EU public procurement package

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Paragraph 1 b xi

Draft report

(xi) to ensure that account is taken of the discrepancies in the openness of public procurement markets on both sides of the Atlantic and the huge interest on the part of European companies in obtaining access to public contracts in the US both at federal and state level, for example for construction services, traffic infrastructure and goods and services while respecting sustainability criteria for procurement on both sides, inter alia the new EU procurement and concession package entering into force in 2016;

Amendment

(xi) to ensure that account is taken of the discrepancies in the openness of public procurement markets on both sides of the Atlantic and the huge interest on the part of European companies in obtaining access to public contracts in the US both at federal and state level, for example for construction services, traffic infrastructure and goods and services while respecting sustainability **and social** criteria for procurement **as well local self-government, “in-house”-rules and public-public cooperation** on both sides, inter alia the new EU procurement and concession package entering into force in 2016;

Justification

The CETA Government Procurement Chapter and the related EU Government Procurement market access offer has incurred the EU procurement rules laid down in the 2014 procurement package. However, important provisions are lacking. This is particularly the case with regard to local self-government, “in-house”, public-public cooperation and the possibility to include social and environmental award criteria. In order to prevent this from happening in TTIP a clear reference that these provisions will be ensured would be helpful. Otherwise there might be a risk of an inter-play between the Market access / Services provisions and the Rules/ procurement provisions, i.e. in-house award could be considered as a discriminatory measure.