

Reading guide

Publication of the EU proposal on services, investment and e-commerce for the Transatlantic Trade and Investment Partnership

31 July 2015

The European Commission hereby publishes its proposal for a Title on trade in services, investment and e-commerce as submitted in the 10th Round of TTIP negotiations (13-17 July 2015).

This reading guide intends to provide an introduction to the EU proposal and facilitate its reading. It does not purport to provide an exhaustive presentation of the proposal.

The EU proposal at a glance

Services and investment are a cornerstone of the EU economy. EU international trade in services has increased significantly in the last decade and the EU28 surplus reached €173 bn in 2013. The EU is the world's largest exporter of services supporting several million jobs throughout Europe in the services sector. In 2013, the main partner for EU28 exports of services was the United States (€161 billion, 23% of extra-EU28 services exports). The United States are also the main EU partner for EU28 imports of services (€148 bn, 29% of extra-EU28 imports)¹. Yet, there still remain great opportunities to expand trade in the services sector.

Considering the role of services for both the EU and US economies, the TTIP negotiations aim to make it easier for companies providing services to do so in both the EU and the US while protecting public services and sectors that play a particular role for citizens. Read [this analysis](#) to understand how public services are protected in trade agreements here.

In its proposal, the EU offers meaningful commitments in sectors that are key to foster Europe's competitiveness and growth:

- Sectors that are key “enablers” of the economy and boost the digital economy, such as computer and telecommunication services;
- Sectors that accelerate the integration in global value chains, such as international maritime transport, air transport, courier services, professional and business services;
- Other key economic sectors, such as construction services, distribution, energy or environmental services.

The EU proposal does not include financial services. The EU may make an offer in this area at a later stage depending on progress of discussions on regulatory cooperation in financial services. In the aftermath of the financial crisis, the TTIP negotiations indeed provide a springboard for strengthening collaboration in this area, promoting better consistency between the EU and US rules and fostering financial stability.

¹ As regards all figures mentioned in this paragraph, see Eurostat news release: <http://ec.europa.eu/eurostat/documents/2995521/5172938/2-26062014-AP-EN.PDF/874d46dc-57cb-40c9-b5c7-c49b6abf8c81?version=1.0>.

Importantly, the EU treats differently a number of so-called sensitive sectors. This approach is consistent with its policy orientations in trade agreements over the past 20 years. In particular:

- audio-visual services are excluded from commitments related to the opening of the markets in accordance with the negotiating mandate given by the Member States to the Commission (see the scope articles in the sections related to liberalisation of investments and cross-border supply of services – Article 2-1 and Article 3-1 respectively).
- Public services are protected in TTIP. In accordance with the joint statement on public services by Commissioner Malmström and her US counterpart Ambassador Froman on 20 March 2015 [http://europa.eu/rapid/press-release_STATEMENT-15-4646_en.htm], the EU protects public services and in particular sectors which play a special role such as public health, public education, social services or the management, collection, purification or distribution of water (see in particular the called “public utilities reservation” - Annex III and other relevant reservations in Annex II; for a general presentation, see also how we protect public services [here](#)).

Structure and main elements of the EU proposal

The EU proposal consists of two main elements: a text and a number of annexes. This package reflects the compromise reached earlier this year between Commissioner Malmström and her US counterpart Ambassador Froman regarding the architecture of the Title on services, investment and e-commerce.

1) **A draft text.** This text lays down the main definitions, principles and obligations that both sides agree to implement as regards the measures they apply (or will apply) affecting trade in services.

Chapter I includes general provisions which apply to the entire chapter, including definitions. It sheds light on the ambition to create a better climate to develop, and achieve progressive reciprocal liberalisation of, trade in services, investment and e-commerce between the Parties. Concurrently, it reaffirms explicitly the right of each Party to regulate to pursue legitimate policy objectives (a few examples of such objectives are provided in the first paragraph of Article 1-1 such as protecting public health and consumer protection; the list is not exhaustive).

Chapter II applies to investment. The principles set out are basically common to all EU free trade agreements: commitments not to impose certain kinds of “quantitative” barriers (“market access”; e.g. restrictions on the number of investors), commitment not to discriminate investors of the other Party (“national treatment”), commitment to extend to the other Party any more favourable treatment that would be provided to a third party (“most favoured nation treatment”). Importantly, the EU also foresees a number of exceptions in specific sectors or activities (so-called “reservations”). These “reservations” are listed in different annexes (see below). These various provisions do not apply to audio-visual services and subsidies and do not affect the obligations undertaken in the context of the separate Title on government procurement (see Article 2-1).

In view of the on-going reflection on investment protection, the EU proposal does not include provisions in this area, but only a placeholder.

Chapter III sets out the principles and obligations that both Parties undertake as regards the measures affecting the cross-border supply of services. It does not apply to audio-visual services and

subsidies and does not affect the obligations undertaken in the context of the separate chapter on government procurement (see Article 3-1). The same basic principles common to all EU free trade agreements are included (namely market access, national treatment, most-favoured nation treatment) and are accompanied by “reservations” (exceptions) in Annexes.

Chapter IV includes principles governing the right of individuals to enter and stay temporarily in the territory of the other Party with a view to supplying a service (“Temporary presence of services suppliers” or “mode 4” in services jargon). Importantly, this chapter leaves each Party free to regulate the entry of natural persons on their territory (e.g. visas, work permits, etc.) as long as the measures are not applied in such a manner as to impair the market opening flowing from the Title on Services (see Article 1-1 (2) and the so-called “labour and strike clause”²).

Chapter V covers principles applying to the regulatory framework affecting services and investment: licensing and qualification requirements, transparency, mutual recognition of qualifications, as well as disciplines governing specific sectors (computer services, postal and courier services, telecommunications, financial services, international maritime transport, air transport, electronic commerce). It is important to note that nothing in this Chapter prevents the Parties from regulating services in a non-discriminatory way, e.g. imposing quality standards in the area of health or education or applying universal services obligations.

Chapter VI lays down key principles with a view to promoting e-commerce while maintaining the Parties’ ability to pursue legitimate policy objectives such as consumer protection.

The Title on services, investment and e-commerce aims to set conducive conditions for trade in services. That being said, certain circumstances make it necessary for the Parties to take appropriate measures (for instance in order to protect consumers, human health, personal data, the environment, etc). Chapter VII (‘exceptions’) explicitly caters for this.

2) Annexes concerning the EU. In a nutshell, these annexes define what the EU opens or not in the various services sectors, now and in the future.

In more technical terms these annexes include - sector by sector - the commitments and exceptions to these commitments (“reservations”) that the EU intends to undertake as part of the agreement (bearing in mind that no commitments are taken for the audio-visual sector, see above).

- The commitments and reservations in the offer are scheduled using a positive list for market access (Annex III). In other words the EU lists only the sectors in which it commits to not apply “quantitative limitations” as a matter of principle. However, even for those sectors, some “quantitative limitations” may be maintained or introduced; these “reservations” (exceptions) are exhaustively listed in Annex III.
- For obligations other than market access, commitments and reservations in the offer are scheduled using a negative list (Annexes I and II). These obligations include national

² As regards the “labour and strike clause”, see Annex III, footnote 3. The TTIP, like other EU agreements on trade in services, will not affect the laws which underpin people's rights at work, such as their right to join a trade union or earn the minimum wage. Commitments on workers’ mobility cannot be invoked to undermine people’s right to strike.

treatment (i.e. non-discrimination principle), performance requirements, principles applying to senior management and board of directors, and most favoured nation treatment.

Annex I lists the measures that already exist and are subject to the so-called “ratchet” clause (ratchet is a mechanism which captures future liberalization in a given sector. Example: if a country has a reservation related to an equity cap in Annex I, any further lifting of the cap done after the agreement enters into force is would be bound by the ratchet). The EU has listed all relevant measures for transparency purposes.

Annex II lists the measures that already exist or may be introduced in the future (the ratchet mechanism does not apply to Annex II - it will always possible to reverse future liberalization). Importantly, this annex contains reservations for public services, including health (see reservation Nr. 20), education (see reservation Nr. 17), social services (see reservation Nr. 20), and water (see reservation Nr. 18). This reflects the EU policy on public services followed during the last 20 years (see above)). The EU also keeps full leeway as regards “new services” that may emerge for instance as a result of technological development (see reservation Nr. 26).
