



European  
Commission

# **Regulatory cooperation in TTIP**

## An introduction to the EU's revised proposal

21 March 2016

**Regulatory cooperation: helping regulators work together for everyone's benefit**

Regulatory cooperation is an innovative part of TTIP. It is important, because of potential gains for our economies and for our citizens.

Regulatory cooperation with the US has been on the agenda for many years and has produced good results in areas of common interest (e.g. ranging from aviation and marine safety to organic labels, electric cars and smart grids).

However, regulatory cooperation is not used today to its full potential. The objective in TTIP is to facilitate and support cooperation in areas of common interest so it can produce optimal results.

By cooperating more efficiently, and from early on, regulators will be able to benefit from sharing resources and expertise to reach their public policy objectives whilst avoiding unnecessary duplications and barriers for trade and investment.

Conversely, cooperation will not be an obligation where both parties do not see value in working together. That could be the case, for instance, if the EU and US have different views on the level of protection needed in a given area.

**A revised EU proposal on Regulatory Cooperation in TTIP**

In 2015 the European Commission tabled its initial proposal for a Chapter on [Regulatory Cooperation] in TTIP<sup>1</sup>. The Commission then tabled a revised proposal during the February 2016 TTIP negotiating round, following discussions in 2015 with civil society, consumers, business and other stakeholders and continuous dialogue with the European Parliament and all Member States

The revised proposal better targets our efforts towards achieving more compatible regulations on both sides of the Atlantic. It retains our commitment to an ambitious outcome on regulatory cooperation.

It envisages:

- a clear authority for and commitment to international regulatory cooperation by regulators of both sides a mutual commitment to some basic rules to make cooperation more effective
- a process which:
  - sets priorities for cooperation,
  - ensures regular reviews of progress and
  - fosters cooperation in new areas.

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<sup>1</sup> See DG TRADE's website: [http://trade.ec.europa.eu/doclib/docs/2015/april/tradoc\\_153403.pdf](http://trade.ec.europa.eu/doclib/docs/2015/april/tradoc_153403.pdf)

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### In the TTIP negotiations the EU is seeking to:

1. **Enhance or at least maintain the level of protection** through regulatory cooperation thus benefitting citizens, regulators and business, including in particular SMEs;
2. **Clarify and simplify** scope and areas covered and other concepts of the initial proposal;
3. Profile regulators as **initiators of cooperation**; any new regulatory cooperation initiative must be based on the common interest of regulators;
4. Strengthen **transparency** and **public participation**, including a possibility to propose measures towards more compatibility of EU and US regulations in specific areas;
5. Outline essential elements of an **effective institutional mechanism** in TTIP. Any such mechanism will not have decision-making powers and will fully respect the regulatory procedures as applicable in the EU and the US.

### The EU's proposal in more detail

#### 1. Protecting public policy objectives

- ✓ We clarify the role of regulatory cooperation as a contribution to pursuing high levels of protection in public policy, including public health, safety and the environment while facilitating trade and investment (Article X.1 par 1 lit. a) and b)).
- ✓ We stress our commitment to enhance or maintain the levels of protection in public policy areas, to respect the right to regulate and the application of our fundamental principles such as the precautionary principle for the EU side (Article x.1 par. 2, 3).

#### 2. Simplifying the chapter's legal concepts and scope of application

- ✓ We introduce a clearer delineation of measures (Definitions - Article x.2) and the type of cooperation covered (Scope- Article x.3). Any regulatory cooperation initiative-s has to be based on the common interest of regulators.
- ✓ We will thus be applying the provisions of the chapter to cooperation in sectors (goods and services, such as for example in the automotive, professional services or pharmaceutical sectors).

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At the same time we keep the door open to future areas where EU and US regulators may see merit in cooperating (post TTIP conclusion).

### 2b. Cooperation at the non-central level and legislative proposals

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- ✓ We maintain a provision on cooperation at the non-central level (Article x.7)- while making clear that the nature of this cooperation is entirely in the hands of regulators concerned. The EU Commission and the US central government will encourage cooperation to take place in line with the provisions of the chapter. But it will always be for the relevant regulators on either side to decide whether they want to cooperate in the first place.
- ✓ We maintain basic commitments to keep each other informed on legislative proposals (proposed directives and regulations as adopted by the Commission and Congress bills introduced by Members of Congress in Congress) that could have an effect on our cooperation (Article x.8) and we agree to provide a possibility for each other to present our views.
- ✓ This provision is meant to help either side understand the important legislative developments and their impact for EU-US regulatory coherence. It goes without saying that this does not

imply any obligations for our legislators, who remain fully sovereign to adopt the legislative acts as they deem necessary in an informed manner.

### 3. Ensuring regulators retain ownership while respecting basic rules

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- ✓ We introduce a general commitment to pursue regulatory cooperation as a tool to fulfill our public policy objectives while facilitating trade. In areas of common interest we agree to update each other regularly on new developments (Article x.4 par. 1).
- ✓ At the same time, regulatory cooperation remains voluntary and cannot be imposed on regulators (Article x.3 and Article 4 speak about common interest and joint priorities of regulators) – TTIP provisions are meant to support compatible outcomes where regulators identify common interests. Of course, regulators can and will continue to cooperate on non-trade related areas, as is the case now, without their cooperation being affected by TTIP.
- ✓ We also put forward general provisions governing regulatory cooperation, the "rules of the game". This means offering to

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each other early opportunities for cooperation and information exchange (Article x.4 par. 2 lit. a)) as well as a commitment to take into account each other's approaches on their merits where relevant- before we go ahead and regulate (Article x.4 par. 2 lit.b)).

These commitments are straightforward and compatible with our respective regulatory systems.

### 4. Giving a stronger voice to stakeholders and the public

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✓ We complement the general provisions in Article x.4 above by an illustrative list of more specific methods how regulators should promote compatible regulations. Article x.5 par. 1 refers to common principles, mutual recognition or equivalence among the possible repertoire – where appropriate.

✓ We foresee in Article x.5 par. 2 that EU and US shall provide for opportunities for natural and legal persons to present proposals to improve the regulatory environment (e.g. doing away with unnecessary duplications, testing or certification that do not lead to additional protection for our citizens).

✓ This is because, to engage in the type of cooperation as mentioned

in par. 1, regulators will need substantiated input from stakeholders. If they lack the requisite information and data and absent a common interest of stakeholders on both sides getting to joint outcomes will be difficult.

✓ We add a provision on transparency and public participation (Article x.6 par. 1) to ensure that we take all appropriate measures on each side to offer opportunities to our citizens to present their views on ongoing cooperation and propose new initiatives.

✓ Article x.6 par. 2 contains a corresponding obligation to provide feed-back on contributions and make them public, to ensure transparency. Transparency will also be further enhanced by a joint EU-US Annual Regulatory Cooperation Program, on which each side shall consult its respective advisory groups ensuring representation by all interests concerned (Article x.6 par. 3). We make clear that no class of stakeholders will be accorded privileged treatment.

### 5. Setting criteria for an effective institutional mechanism

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✓ We outline what we see as the criteria any institutional

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mechanism has to meet – to monitor our commitments in TTIP but also to be a motor for future cooperation beyond TTIP conclusion (Annex on the Institutional set up for Implementation).

[Chapter on Regulatory Cooperation]; see Article x.9.

These criteria are:

- political accountability,
  - effective steering at expert level
  - sufficient guarantees of transparency.
- ✓ The institutional mechanism will provide support and advise to decision makers and is expected to take shape as negotiations progress. The COM will be preparing a detailed proposal.
  - ✓ Any institutional mechanism will not have the power to take any legally binding decisions neither will it replace any domestic EU or US regulatory procedures to implement regulatory cooperation initiatives.
  - ✓ The respective roles of the European Parliament and the Council of the EU as well as of EU Member States in the regulatory process are thus fully maintained.

### 6. Exclusion of dispute settlement

- ✓ We make clear that dispute settlement will not apply to the