

JOINT INTA/LIBE PUBLIC HEARING

Trade agreements and data flows: Safeguarding the EU data protection standards

Data flows: how to comply with the EU standards on data protection and fundamental rights?

Thank you very much to the Chairs, for inviting me to speak at this very important hearing - all the more important since it now takes place before the final vote on your TTIP resolution.

I come last, but hope not least, in a line of distinguished speakers and I agree with many of the points already made. I will bring into the debate some further aspects to help convince you, if you are not so already, that trade is absolutely not the place for the EU to negotiate around personal information transfers.

Firstly, trade has often been a positive driver in encouraging countries to adopt data protection laws, to ensure compliance and ability to conduct business with the European Union and other privacy-respecting partners.

Over 100 countries on all continents have now adopted general/or holistic data protection legislation (see map), and more are in the course of doing so. To connect this to the trade agreements under discussion, here is a list of the 26 partners negotiating the Trade in Services Agreement (see slide). As you can see, marked in red, only four of them do not have general data protection legislation – Panama, Pakistan, Turkey and the United States.

Moving on to the other major ongoing trade negotiation – the Transpacific Partnership or TPP: of the 12 partners currently negotiating (see slide), only Brunei – alongside the United States – does not currently have a general data protection law.

The vast majority of country partners in current negotiations do have general data protection legislation of their own. The one, most powerful, partner that does not is the United States. To be clear, except for a few specific sectors (children, financial, health records and video hire), the processing of personal information for commercial purposes remains largely unregulated in the US on the federal level; while regulations applying to the government collection and use of such data excludes EU citizens, or any other non-US nationals.

The United States representatives, including in Congress, have stated clearly and publicly that their aim is to achieve uniform standards through similar language for personal information transfers in all trade agreements, and that data protection must not be a pretext for protectionism. The US legal text (see slide from the leaked TISA February 2015 text) aims to ensure that the parties refrain from measures that restrict free flows of data across borders, including personal information, and, in another article, are prohibited to introduce legal requirements for local data storage or processing. (To be clear, this proposed text is all in square brackets and other parties are proposing counterbalancing articles on data protection, also not agreed).

By contrast, the concluded agreement between EU and Canada (CETA) contains a general provision in its e-commerce chapter (see slide), which calls for respect of privacy laws and adherence to international conventions, such as the OECD guidelines for trans-border data flows and Council of Europe Convention 108. Canada does have strong general data protection laws, both for the private and public sectors, as well as privacy as a fundamental right in its constitution.

So it looks like what one very powerful partner is trying to achieve, is circumvent the majority of other partners' privacy laws through a binding trade agreement that trumps them all. The fundamental issue here is that one partner sees privacy protections as a barrier and protectionism that stands in the way of jobs and economic prosperity; while others **see it as a human right that - in addition - increases trust in commercial engagement and promotes therefore prosperity and jobs.**

A second aspect Mr Chair, is related to your report on mass surveillance of last year, which has as a key recommendation that US revise its legislation without delay to recognize privacy and other rights of EU citizens, and provide for their judicial redress (recommendation 30). The US has failed so far to take legislative steps to address concerns about access to the data of EU citizens by the National Security Agency (NSA) and others. The FREEDOM Act is a step forward, but only addresses the concerns of US citizens. "Foreigners" continue to be discriminated against. Equally negotiations on Safe Harbor to meet the 13 Commission demands are still not concluded - one year after the Commission-requested deadline of end June 2014; and neither are the so-called "umbrella agreement" EU-US negotiations about lawmakers' access to personal data, which have been going on for years. Under these circumstances there can be no relaxation of data protection safeguards with regards to trans-border data flows.

Finally, and to us equally compelling, is the fact that safeguarding fundamental rights is not a priority in trade agreements, they are about economic priorities and lowering barriers to trade, which can have the opposite effect of deregulation. Further, and particularly relevant to TTIP and TISA, in the US, trade negotiations are not open to public debate; they are captured by industry through a combination of complete secrecy with privileged access for around 600 vetted private industry advisors. Such negotiations are not balanced, they reflect industry interests. No demand side there - just the supply side at the table.

So given all these considerations, how to comply with EU standards and fundamental rights?

Finn Myrdsatd in the previous panel already put on the table our main ask: do not include personal information transfers in TTIP, and if you absolutely must, then please follow the recommendation of the LIBE opinion, the expert committee on this issue, and vote for the amendments that follow this recommendation in your resolution.

A resolution on TISA from the Parliament is now also needed, since the two agreements have such synergies, including on the subject we are discussing here. We look forward to a timetable for such a resolution in the near future and are ready to engage. I understand from reading her reactions to the Regulation yesterday, that Mrs Viviane Reding will be the rapporteur, congratulations.

Secondly, and equally important, a robust new data protection Regulation is long overdue. It is shameful that after so many years of deliberations the Council of Justice Ministers produced a version that weakens rights in so many respects as to even go below current data protection 1995

Directive standards. This includes provisions on data transfers to third countries. The Council has carved out major loopholes via a system of "approved" codes of conduct and certification schemes without approved coordination and oversight (Articles 38, 39 and 42). Further, the Council is also proposing that undefined public bodies can transfer data to other undefined public bodies outside the EU without accountability or oversight.

So we urge you in the forthcoming months of the trialogue to stick to your guns and the Parliaments' first reading vote and not let this all-important law go below current protections and fundamental rights.

Finally, and maybe idealistic to wish for, but the most effective way to ensure privacy protections and fundamental rights is to have holistic privacy laws, following the higher standard, across all the world's legal jurisdictions, wherever data is transferred, processed or stored. This is not such a pipe dream, you have seen that the number of countries joining the club is growing every year; Europe has had a leading role on this in the world and you will need to ensure that it keeps it.

Ends

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