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European Press Publishers’ Concerns in View of the TTIP Negotiations

Magazine and newspaper publishers have so far been closely following the negotiations for a comprehensive EU-US trade agreement. Since the Transatlantic Trade and Investment Partnership (TTIP) would be the largest international trade agreement in history, it goes without saying that it will have a strong impact on all sectors, including the publishing sector. The European press sector proves to be significantly more vital and pluralistic than the US-American market. This is a result of supporting and protecting instruments, most Member States have set up in favour of a truly free press.

Given the specific role of a free and independent press in a democratic society, the potential impacts on the publishing sector have to be taken into account at any level of negotiations about state agreements. We are therefore concerned about the all-encompassing approach the negotiations appear to be taking. Even though specific sectors such as the automotive industry are specifically identified, the negotiations are not restricted to these areas. In view of the unforeseeable consequences of such a far-reaching liberalisation at international level, we do not consider this to be the right approach.

Instead, the TTIP agreements should be enumerative and only concern specific sectors expressively mentioned and agreed upon. If this is not considered to be in line with the objectives of the negotiations, European press publishers urge the European Union to at least exempt culture and media from the negotiations. A culture and media exception specifically covering publishing of magazines and newspapers on all platforms is vital to the sustainability of a free press across the EU Member States.

While the “removal of trade barriers in a wide range of economic sectors” and the “elimination of restrictions for trade goods” are generally positive goals, European publishers fear that TTIP might jeopardise the legal framework which protects and fosters a free, sustainable, and pluralistic press in Europe. Press products and services cannot be treated in the same way as any other trade good.

So far, the negotiations do not exclude from the envisaged liberalisation the laws which various EU Member States have put in place in order to safeguard and foster free and pluralistic media and culture. Furthermore, contractual agreements between media players – acknowledged by competition and other regulatory authorities – might be placed at risk. For these reasons, we want to highlight just some of the topics concerned by a free trade agreement that might consider media specific rules as non-tariff barriers, or other mere obstacles to free trade between the United States and the European Union. The following concerns are by no means exhaustive since it cannot be foreseen, in which way all areas are affected be it current or future legislation.

Price fixing, for instance, is a necessary instrument allowing press publishers to bindingly agree on single copy sales’ prices of magazines and newspapers. The main objective of price fixing legislation, or respective agreements, is to allow equal access of citizens to press products as well as ensuring diversity of press titles. The price fixing system enables and maintains a distribution network on the whole territory of the respective Member State, without constituting an obstacle to the emergence of new actors on the market.

Similarly, Member States have also put in place certain mechanisms to ensure an appropriate distribution of press titles, especially when it comes to remote areas. Specific agreements and distribution systems enable the provision – on a nationwide basis – of a
variety of press titles in retailers' stores. Combined with a price fixing system, this means that even citizens in remote areas benefit from a broad choice of press titles at affordable and equal prices. Without price fixing and the respective distribution system, of would not be financial viable to provide such variety of titles.

Another topic is the specific rates of value-added tax. These rates provide for wide and affordable accessibility to newspaper and magazine content for all citizens and contribute to the sustainability of a free press.

European rightholders such as magazine and newspaper publishers are also very concerned about the risk of unpredictable consequences for the European copyright framework, which provides the legal foundation for their business models i.e. copyright enabling them to monetise the creative content they produce.

All these aspects could be called into question by the general liberalisation concept of TTIP. If the aforementioned rules will be classified non-tariff barriers, they are in danger of being overridden by the TTIP agreement. Even if this were not the case, they might nevertheless be seen as interfering with US investments on the European market. European press publishers are therefore concerned that the measures designed to protect and foster media might be subject to the procedures of the investor-state dispute settlement. This would have a chilling effect on the Member States. Regulatory action to protect media pluralism could result in compensation claims for damages, making it unattractive to maintain the same level or set up new rules to sustain the freedom of the press.

We therefore urge once again the delegations in charge of the negotiations to exclude the publishing sector part from their negotiations. This can only be assured by an enumerative restriction of the scope of TTIP, or by means of a specific exemption for culture and media. We are concerned to hear about the exception for the audiovisual sector, which ignores most of the products of the press publishing sector. The European Union has also specifically announced the possibility of making this sector part of the negotiations at a later stage.

It is the European Commission does make exceptions to the scope of the negotiations (e.g. the exception for the public healthcare sector announced in early July 2014). Taking into account the importance of a free and independent press as precondition for democratic society, European press publishers do not understand why the European Union does not recognise this by leaving this sector out of the negotiations, even though we have been reassured by responsible delegates that the aforementioned press freedom safeguards are not supposed to be touched by the TTIP.

It is also to be feared that restrictive rules, which European enterprises have to comply with would not apply to US-American enterprises in cases where the US law is less restrictive. If, for example, European data protection rules hinder a US enterprise to freely offer and distribute a digital service it could then be overridden by TTIP considering these rules as non-tariff barriers whereas European enterprises would still be subject to data protection restrictions.

Sophie Scrine
Deputy Executive Director
European Newspaper Publishers’ Association (ENPA)
sophie.scrine@enpa.be
+32 25 51 01 97