



**Local & Regional
Europe**

Transatlantic Trade and Investment Partnership (TTIP)

**Commitments must comply with local and
regional autonomy**

CEMR Position paper on the ongoing negotiations on TTIP

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Context

The negotiations on the Transatlantic Trade and Investment Partnership (TTIP) were launched in June 2013 between the European Union and the United States of America with the ambition to create an open and liberalised market between the world's two most developed trading blocks. After many months of discussions behind closed doors, the Mandate adopted by the Council of the European Union was published in October 2014, allowing stakeholders to appreciate the potential terms and scope of this strategic free trade agreement. **The opacity of the discussions and the mixed messages regarding sensitive provisions have raised legitimate fears, particularly for local and regional authorities (LRAs).**

In this framework, the Council of European Municipalities and Regions (CEMR) wants to express its views and concerns and asserts that **if the willingness to open respective markets and to ensure reciprocity between the EU and the USA is to be supported, this cannot be achieved at any price.** CEMR also deplores the **damaging lack of transparency** and the **little room for manoeuvre in the negotiations**, which are led exclusively by the European Commission and have seen only limited involvement of key stakeholders so far, be they LRAs, the European Parliament or the EU's 28 national Parliaments which can only approve or reject the agreement as a whole, without any possibility to amend it.

This situation is extremely worrying since the broad scope of the agreement whose **provisions, when combined will impact on LRAs' autonomy, models of governance and service delivery obligations.** Whilst the benefits of freer markets are welcome, the consequences of an irreversible unregulated free market which would impede LRAs' autonomy across the EU and threaten their ability to fulfil their obligations must not be overlooked.

In this context, **CEMR calls upon the European Commission to ensure that the negotiations will strike the right balance between the anticipated free trade benefits and the preservation of local and regional authorities' competences and ability to protect the general interests of their citizens.**

CEMR Key messages

1. CEMR acknowledges that TTIP is presented by the negotiators as a leverage to boost economic growth, job creation and competitiveness in Europe; however, it is important to ensure that the provisions take account of respective interests and public services models of both the EU and the US.
2. TTIP provisions must respect public authorities' rights and interests, notably the inviolable principle of self-administration and the freedom to govern, regulate and fulfil their public service missions, in accordance with art.14 TFEU and Protocol 26 of the Treaties.
3. Therefore, a horizontal exemption for all public services must be included in the final agreement; and standstill and ratchet clauses, according to which existing levels of liberalisation cannot be reversed, must be excluded for public services and utilities.
4. Provisions of the European directives on public procurement and concessions as well as European state aid rules concerning public services must remain the EU framework; TTIP should provide the possibility to derogate from EU internal market and competitions rules for reasons of the general public interest.
5. European standards in relevant terms (e.g. health, safety, environment, etc.) should not be compromised, and LRAs must retain their right to set public policies and standards in all fields falling within their remit.
6. CEMR opposes the current provisions on investor-to-state dispute settlements, and calls for an investor's protection mechanism that is transparent and whose ability to challenge LRAs' decisions remains limited.

CEMR position

TTIP is expected to have positive outcomes, but potential negative impacts need to be addressed

In a context of budgetary cuts and binding service delivery missions, LRAs' economic, social and financial sustainability is already threatened and the existing adequate legal framework must be maintained. CEMR acknowledges that TTIP is expected to **boost economic growth, job creation and competitiveness in Europe**; however it is important to ensure that TTIP's provisions take account of respective interests and public services models of both the EU and the US.

In order to respond to concerns raised by the successive and contradictory impact studies undertaken so far, CEMR calls on the establishment in the agreement of a transparent monitoring process of the impact of the TTIP within 2 years after its enforcement, which methods will have to be neutral and objective; and related to all fields covered by the agreement.

Opening up markets, reciprocity and the removal of trade barriers are not an end in themselves and must not entail a deregulation which would harm LRAs, SMEs and citizens.

Market access commitments in TTIP must comply with local and regional autonomy

With the aim of ensuring reciprocal market access through TTIP, CEMR considers it **imperative to defend the historical freedom for LRAs to govern, as enshrined in the EU Treaties**.

Local and regional self-administration is one of the keystones of Europe which enables public authorities to define public policies that take account of the needs, specificities and expectations of their citizens on a legitimate and democratic basis. The negotiation of any free trade agreement and its provisions must take account of these fundamental rights for LRAs. CEMR calls on the Commission to ensure that TTIP provisions will respect public authorities' ability to regulate and act in the general public interest according to the respective levels of competences.

Public services must be out of the scope of TTIP

Although the core objective of TTIP is to achieve reciprocity and open markets, **the existing EU safeguards on public services, enshrined in art. 14 TFEU and Protocol 26 of the Treaties are non-negotiable issues**. From this perspective, CEMR welcomes the [Joint Statement](#) made on 20 March 2015 on Public Services from Commissioner Malmström and Ambassador Froman, in which the negotiators highlighted that "*EU and US trade agreements do not impede governments' ability to adopt or maintain regulations to ensure the high quality of services and to protect important public interest objectives*". This commitment must now be strengthened within the actual TTIP text, which must go further and provide a horizontal exemption for all public services, just as audio-visual services are clearly excluded from the negotiating mandate. **Piecemeal 'reservations' in an annex applying to different public services, and different TTIP measures, in different countries are not satisfactory and will not ensure the necessary safeguards are in place**. Neither it is satisfactory to simply state that TTIP will not affect the high quality of public services if they nevertheless remain within the scope of the agreement.

Standstill and ratchet clauses according to which existing levels of liberalisation cannot be reversed, must be excluded for public services and utilities.

References to 'public utilities' and 'services supplied in the exercise of governmental authority' are unhelpful as there is no common understanding as to their definition and scope, even amongst experts.

LRAs must remain free to organise, support, finance and deliver local and regional public services, a sphere where stiff competition and deregulation that disregard the issue of service quality or adequacy is not appropriate. The ambiguity of the EU negotiating Mandate regarding the

provisions on market access in the public services area raises legitimate concerns for LRAs and requires a watertight drafting for clear and specific legal protection for local and regional public services.

LRAs remain unequivocal and resolute in their **right to determine their own service delivery models** and to ensure quality and continuity in providing these services.

The same goes for the provisions on public procurements and concessions, since the European public procurement and concession package adopted in 2014 and currently being implemented yield a satisfactory and adequate legal framework. LRAs must be able to retain the freedom to determine key qualitative criteria in public tenders and requirement specifications and to choose the best form of management for their public service missions.

CEMR expects the provisions concerning public procurements or state aid to remain within the framework of what currently applies to the EU internal market. In this regard, TTIP should explicitly provide the possibility to derogate from the EU internal market and competition rules for reasons of general public interest, as it has been publicly stated by the Commission on several occasions.

Regulatory cooperation as leverage for raising standards

While understanding that regulatory cooperation can be a positive way to eliminate trade barriers in the transatlantic market, CEMR stresses that this must **not give rise to a lowering of European standards** in terms of health, safety, environmental and consumer protection, labour law, data protection, etc. The negotiations should be the occasion to increase the standards of common EU-US goods and services, while reaffirming the **continued right for LRAs to set public policies and standards in all fields of competences and to decide to establish higher standards where necessary on the grounds of general public interest.**

In that perspective, regulatory cooperation shall not lead to the creation of formal or informal institutions whose prerogatives may circumvent or weaken the legitimate legislative and regulatory procedures and assemblies and harm national and subnational public authorities' sovereignty.

Similarly for setting standards, this should be developed in **transparent procedures which furthermore are based on a legitimate and democratic mandate.**

No privatisation of justice through the so-called “investor’s protection” mechanism

CEMR is opposed to the current negotiating Mandate's provisions on Investor-to-State Dispute Settlement (ISDS) which would allow private investors to challenge LRAs' decisions and circumvent national jurisdictions and common courts. **Such an arbitrary mechanism would be highly detrimental given the potential for undermining the freedom of LRAs to govern and to fulfil public service missions.** Numbers of cases have been brought against public authorities seeking to uphold public health as regards cigarette packaging for example. This major concern echoes the overwhelming opposition from public and private sector stakeholders and need to be taken seriously. Although an ISDS can provide a legitimate protection for investors in unstable countries, the US and EU Member States' judicial systems are reliable and decisively competent to address any litigation.

The ISDS provisions as they currently stand are unacceptable for CEMR from whom the decision of the European Commission to exclude this issue from the current negotiations is viewed positively. In this light, CEMR supports all efforts from the negotiators to remove all legal uncertainties and avoid any mechanism, which could be exploited by unsatisfied private sector interests wishing to challenge public decisions on spurious grounds.

In case the negotiations move toward reconsidering an ISDS mechanism, in the absence of a formal horizontal exclusion of public services from TTIP as a whole, CEMR will campaign for public services to be clearly excluded from the mechanism.

CEMR stands for any investor's protection mechanism to be **fully transparent and to set strict limitations of the possibilities to challenge LRAs' decisions**, in order to avoid any threat or breach to the constitutional and legal fundamental principles.

Tackling the democratic deficit of the negotiations through fullest transparency

CEMR deeply regrets the lack of transparency of the negotiations, which remain closed to public scrutiny and calls for a **comprehensive involvement and consultation of LRAs**.

CEMR understands that the Committee of the Regions is represented in the TTIP Advisory group. Nevertheless, CEMR, which represents Local and Regional Governments' national associations from across Europe, is interested to **pursue regular exchanges with the European Commission on the content and the progress of the negotiations**.

ANNEXES: Amendment submitted by CEMR, tabled by several MEPs (n° 397) and used as basis for a compromise amendment on the exclusion of Services of General Interest and preservation of the right for LRAs to organise and provide their public services as they intend to (CAM 22). This compromise amendment has been adopted unanimously by the INTA committee of the European Parliament on 28 May.

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About CEMR

The Council of European Municipalities and Regions (CEMR) is the broadest organisation of local and regional authorities in Europe. Its members are over 50 national associations of municipalities and regions from 41 European countries. Together these associations represent some 150 000 local and regional authorities.

CEMR's objectives are twofold: to influence European legislation on behalf of local and regional authorities and to provide a platform for exchange between its member associations and their elected officials and experts.

Moreover, CEMR is the European section of United Cities and Local Governments (UCLG), the worldwide organisation of local government.

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