



# EUROCITIES statement on the Transatlantic Trade and Investment Partnership and future trade agreements



## Introduction

Since July 2013, the European Union (EU) and the United States have been negotiating a free trade and investment treaty, the 'Transatlantic Trade and Investment Partnership' (TTIP).

The European Commission is conducting the negotiations on behalf of the EU, based on the negotiating mandate approved by the Council on 14 June 2013.

TTIP negotiators have already ended the 13th round of their discussions in April 2016. At least one more round of negotiations will take place before the summer break.

TTIP will directly affect cities as it seems likely that TTIP will have an impact on regulations related to public services, public procurement, state aid, social, labour, environmental standards, consumer, data and investment protection.

However, there is still some legal uncertainty as to the specific direct and indirect impacts of TTIP on local governments and European standards.

Some European cities are concerned about the potential impact of TTIP, others have explicitly declared themselves 'TTIP free', while other cities are more in favour. In many cases, citizens, businesses and civil society are also expressing concerns.

We, as EUROCITIES, therefore call on the European Commission to take European cities' views and concerns into account in the negotiation process and to ensure increased transparency and better access to timely information on TTIP negotiations.

In EUROCITIES statement of October 2014, we recognise the potential benefits of TTIP in terms of creation of jobs, growth and opportunities for SMEs. However we insist on the protection of EU values, standards and public services, as well as on the right for all levels of government to fully exercise their regulatory power. TTIP cannot serve merely economic objectives, but should explicitly safeguard established EU and member states' standards in social (including social/affordable housing), employment, public health, culture, education, food and product safety, data protection, consumer safety, animal welfare and environmental areas.

We call on the European Commission and member states to acknowledge cities as key partners in the negotiation process and we propose that the final TTIP texts include the following elements:

- Public services should be protected and explicitly excluded from the scope of the agreement. In addition, the method of the 'positive list' of covered services should be used in the whole agreement (market access, national treatment, most favoured nation).
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- EU rules on public procurement should be safeguarded and maintained EU social, labour, environmental and health and safety standards should be safeguarded and maintained

Additionally, there is no need to create new judicial bodies for investor state dispute settlements, as the EU national courts guarantee a sufficient and efficient legal protection.

The elements called for in this statement are also relevant for the Comprehensive Economic and Trade Agreement (CETA), future trade agreements and those currently being negotiated, such as the Trade in Services Agreement (TiSA).

## 1. Cities as key partners in the negotiations

City authorities should be closely involved in the negotiation process and an impact assessment of the direct and indirect impacts of TTIP at local level should be carried out by the European Commission.

Currently, cities have only been invited to general stakeholders meetings. These meetings take place after each round of negotiations to update stakeholders on the status of the negotiations and so that they can express their views.

City authorities were not given any specific consideration despite being directly affected by TTIP and as the level of government closest to the citizens, they have to respond to citizen's questions and concerns.

We would also like to see proper impact assessments of the impact of TTIP on local government by the Commission. These assessments should be done through direct dialogue between cities and the Commission. They should include both direct and indirect impacts, as well as trade and non-trade aspects and effect on third countries. The conclusions from these impact assessments should be reflected in the Commission proposals to the US.

Such an approach is the logical application of current EU policy initiatives in the framework of an EU Urban Agenda, in which the EU is assessing the impact of EU regulations and policies at the local level with the view to better taking into account local concerns. This would increase the legitimacy and transparency of TTIP negotiation process.

EUROCITIES members are also ready to provide expertise to conduct these impact assessments.

## 2. Explicitly excluding public services from the scope of TTIP

We request the explicit exclusion of public services from the scope of TTIP and other trade agreements. Our power to provide, commission and organise public services would be at risk if public services were part of the trade agreement.

Furthermore, we strongly welcome the use of a 'positive list' of services covered for market access requirements and that future new services would not be automatically covered by TTIP. This positive list approach should be used in the whole TTIP agreement - covering market access, national treatment, most favoured nation, and investor-state dispute settlement. This approach should also be used for future trade agreements and those currently being negotiated.

We also need to ensure that the views of local authorities on what should be exempted from TTIP and what should be part of the positive list is taken into account by the European Commission and member states. This could be done, for example, through a specific and direct dialogue between European Commission, member states and cities.

Cities play an essential role in providing public services and contribute to Europe's economic stability and to economic, social and territorial cohesion. They support social inclusion through local public services that strengthen the wellbeing of their citizens. The EU treaties recognise the added value of public services and the role of local authorities, for instance in articles 14 and article 106(2) of the Treaty on the Functioning of the EU (TFEU) as well as Protocol No 26, which confirms that 'The shared values of the Union in respect of services of general economic interest (...) include in particular: the essential role and the wide discretion of national, regional and local authorities in providing, commissioning and organising services of general economic interest as closely as possible to the needs of the users'.

We strongly support the adoption of the European Parliament (EP) resolution of 3 February 2016 calling for the full exclusion of public services in the Trade in Services Agreement (TiSA) as well as other future trade agreements and those currently being negotiated, including TTIP. In this resolution, the EP requests the European Commission to introduce a 'gold standard' clause to exclude public services from the scope of trade agreements irrespective of how they are supplied (including in house or through inter-municipal cooperation).

An exclusion of public services from TTIP, CETA, TiSA and future trade agreements, would safeguard the European model of quality, accessible and affordable public services.

### **3. Safeguarding and maintaining EU public procurement rules**

It is fair to open the American market for public tenders to EU investors. However, we insist that TTIP provisions related to public procurement and state aid should remain within the framework of what already applies to the EU internal market and should be safeguarded. Likewise, the current thresholds of the public procurement directives should be maintained and safeguarded.

We request clarity on the discussion regarding a potential change of the thresholds level and extra tendering obligations. It took several years of long negotiations to agree on the EU public procurement directives and the results of that democratic process should be respected.

The possibility to include environmental, social and fair trade criteria in public tenders should also be preserved.

It is also important that TTIP does not prevent local authorities from concluding inter-municipal agreements.

### **4. Safeguarding and maintaining European social, labour and environmental standards**

We welcome the proposed chapter 'Trade and sustainable development' in TTIP, which covers standards on labour and environment. These standards should be binding. Furthermore, we insist on the effective implementation of all ILO standards, to help both sides of the Atlantic promote workers rights around the world.

TTIP should not lead to a weakening of the standards that are already established in the EU and member states. It is essential that TTIP ensures that we can protect and further develop our local economy, our environment, our social and labour rights, public health, consumer safety and animal welfare. In addition, cities' ability to maintain and develop their policies and public services in the cultural sector must be protected. The existing national and European support measures for culture and media should not be challenged by TTIP.

The precautionary principle should also be fully respected. In particular, we would draw attention to the need to safeguard and maintain existing EU and member state standards on:

- social and labour protection
- social/affordable housing
- the environment
- consumer and data protection rights
- health protection
- culture and education
- food and product safety
- animal welfare

TTIP should also not prevent the EU institutions and member states from developing higher standards in the future.

## 5. Settling dispute between investors and states through national courts

We take note of the proposal of new Investment Court System in TTIP and future trade agreements.

The new text on Investment Protection and the Investment Court System contains an important article on the right to regulate (article 2). The article clearly states that the right to regulate is fully preserved. It also clarifies that investment protection provisions shall not be interpreted as a commitment from governments not to change their own legal framework.

This is essential to preserving the right to regulate of all public authorities, including local public authorities.

However, we believe that new additional judicial bodies are not necessary to settle trade disputes. The EU national courts are fair, transparent and guarantee a sufficient and efficient legal protection.

Local authorities are also concerned about the costs that investor state dispute settlement procedures might entail for them. If there are important financial implications for cities, we would like clarification on how they could be supported so that the burden is not disproportionate. Otherwise, the right of local authorities to regulate will be at risk if they fear the costs of legal disputes each time they want to develop legislation or policy.