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European Parliament

Committee on Economic and Monetary Affairs

Public hearing – 18 March 2014 – 15:30 – 17:00

The Transatlantic Trade and Investment Partnership (TTIP) and Financial Services Regulation

It is an honour for me as a representative of Finance Watch to participate in this hearing on the Transatlantic Trade and Investment Partnership and Financial Services Regulation.

We know that the question behind today's hearing title is whether including financial services in TTIP will enable the EU and the US both to develop more financial services for the benefit of the economy and to regulate those services in a coherent and coordinated manner. We also know that the underlying question is that of regulatory convergence between the US and the EU.

TTIP is a free trade agreement and aims to increase the flow of financial services. This objective has to be put in context with the growing flow of evidence showing the negative correlation between increased financial services and economic development[1]. However, I will concentrate on the main question of the day: would the inclusion of financial services in TTIP improve regulatory convergence?

Let us first look at the factors that lie behind the concept of regulatory convergence. What does it take to make financial regulation converge?

In my view, and in the view of many regulators in the world, the three following factors must be the pillars of regulatory convergence:

1. Before we can think of making regulation converge, regulation must be developed with the belief that its purpose is to serve public interest and that policy makers have a duty of putting public interest above all possible other interests including, when needed, when public interest contradicts some private interests.
2. In a world of almost completely generalised mobility of capital and of financial actors thinking and acting globally, regulatory convergence must also think and act globally. This is essential if policy makers do not want to create distortions, regulatory arbitrage and unlevel playing fields. In other words, regulatory convergence has, in my view, the choice between being multilateral and being counterproductive.

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[1] BIS Working Papers 381 "*Reassessing the impact of finance on growth*" (July 2012) - Cecchetti, S and E Kharroubi; BIS "*Financial Structure and Growth*" (March 2014) - Leonardo Gambacorta, Jing Yang and Kostas Tsatsaronis

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3. There is no such thing as a meaningful regulatory convergence without supervisory convergence. Regulatory authorities who, for most of them, are also supervisory authorities know that. Setting the rules is one thing, enforcing them is another and depending on the way the rules are enforced we can find ourselves in situations where different zones follow mutually coherent rules or diverging ones.

I now suggest that we take these three points again and we ask ourselves whether TTIP "ticks the boxes", whether it will help us achieve the three factors indispensable for regulatory convergence.

1. First question: will TTIP respect the hierarchy of interests that should prevail in a democracy between public interest and private interests? Reading the leaked mandate document dated 17 June 2013 coming from the Council (which is the only official TTIP document that I have seen) and in particular its point 15 ("*The aim of negotiations on trade in services will be to bind the existing autonomous level of liberalisation of both Parties at the highest level of liberalisation captured in existing FTAs, in line with article V of GATS*…"), its point 27 ("*The agreement shall be binding on all regulators and other competent authorities of both parties*") and its point 39 ("*The agreement will include provisions on the full liberalisation of current payments and capital movements*"), I have a very strong doubt about that. And if I link the three points I just mentioned with point 22 of the mandate dealing with the inclusion of investor-to-state dispute settlement (ISDS) in TTIP knowing that ISDS is effectively a mechanism that puts private interests on an equal if not a higher footing than public interest, I know that the answer to my first question is "no".
2. Second question: will TTIP introduce a multilateral mechanism for regulatory convergence? The answer to this question is also "no" as TTIP is, by construction, bilateral. This negative answer has far reaching consequences: not only will a non-multilateral system of regulatory convergence have all the negative consequences described earlier but, even worse, it will contradict the work done by those institutions that have the mandate of building a globally coherent regulation. Those institutions, as we know, are the Financial Stability Board (FSB), the Basel Committee on Banking Supervision (BCBS) and the International Organization of Securities Commissions (IOSCO). An important task for us today should be to strengthen them, not to weaken them. But how can we ask those institutions to build a globally coherent financial system if their US and EU members are bound tomorrow by the TTIP agreement (point 27 of the mandate) whilst their non US / non EU members are not? Including financial services in TTIP will have the dramatic consequence of weakening the multilateral financial regulation mechanism that we have started building at a time when we should be concentrating our efforts on strengthening it.
3. Third question: will TTIP contribute to achieve supervisory convergence? The answer, here again, is "no" as supervisory convergence is completely out of scope for TTIP (while it is an integral part of BCBS's and IOSCO's mandates). Please allow me to reaffirm here that regulatory convergence without supervisory convergence is a meaningless exercise.

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I would like to highlight three more points before I come to my conclusion:

1. Beyond the major drawbacks that I have just described, the inclusion of financial services in TTIP would have the effect, everything else being equal, of feeding a race to the bottom in financial regulation. This would be unavoidable given the terms of the mandate highlighted earlier.
2. If we look into the future, one aspect of this race to the bottom would be the so-called "regulatory chill" that would derive from point 27 of the mandate: regulators and policy makers would be constrained by TTIP in their ability to come up with the rules necessary to make finance better serve society.
3. These two negative consequences would be made even worse if an investor-to-state dispute settlement (ISDS) mechanism is included in TTIP but it is fundamental to understand that they would still exist if ISDS were to be dropped from the TTIP agreement.

My conclusion will be about the lack of transparency of the TTIP negotiation process. We have all heard the accusations of "speculation and fear-mongering" made against the voices that raise legitimate concerns and questions about TTIP. On this issue, I would like to ask a simple question: isn't the best way of avoiding supposed speculation to have a transparent process where all the interested parties will be able to follow and see precisely the detail of the agreement emerging?

It is important to realize also that the fears linked to the inclusion of financial services in TTIP are not limited to civil society organizations: for instance, how, without transparency, can we know that the provisions in TTIP related to state-owned enterprises will not endanger some valuable banking systems not based on private bank ownership prevailing in different EU Member states? When one reads the TTIP related position paper on state-owned enterprises by the US Government, one can only be worried about this topic, among many others.

To conclude, this entire debate is about the two most basic principles of democracy: 1) public interest should prevail over private interests; 2) the rule making process should be transparent. Let us make sure that we do not lose sight of those two principles.

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Finance Watch

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