SHARED CONCERNS ON THE COMMISSION'S REVISED TTIP REGULATORY COOPERATION & GOOD REGULATORY PRACTICES PROPOSALS

MARCH 2016 - TRANSPORT & ENVIRONMENT (T&), EUROPEAN ENVIRONMENTAL BUREAU (EEB), EUROPEAN PUBLIC HEALTH ALLIANCE (EPHA), EUROPEAN HEART NETWORK (EHN), THE EUROPEAN CONSUMER ORGANISATION (BEUC) AND TRANSATLANTIC CONSUMER DIALOGUE (TACD)

This following analysis is based on the ***revised EU textual proposals on regulatory cooperation and good regulatory practices published Monday 21st March 2016***. The revised EU proposal contains two chapters: one on good regulatory practices and the other on regulatory cooperation. Our detailed analysis is attached as an Annex.

KEY CONCERNS

This revised proposals covering Regulatory Cooperation and Good Regulatory Practices contain some improvements compared to the May 4th 2015 published proposal. We welcome changes which aim at improving cooperation between regulators. It is positive to see that the right to regulate in order to achieve public policy objectives is now included in the core text of the proposal. Moreover, it mentions the "intention" to use regulatory cooperation to deliver concrete benefits to consumers and to protect them.

But some elements have not changed or have even worsened, to an alarming degree.

First, the scope of regulatory cooperation is still too broad. The planned Horizontal Chapter would provide a 'gateway' for addressing both legislations and non-legislative acts.

Second, our recommendation to secure an exchange of information between regulators on a voluntary basis has only been partially taken into account.

Third, we strongly object to a couple of sections that use the platform of a trade agreement - instead of democratic decision-making processes - to decide on principles of law-making. It introduces some elements of the US 'notice and comment system' in the EU, which is highly problematic because it institutionalises lobbying and changes the ordinary legislative procedure enshrined in the Lisbon Treaty. We welcome the fact that the Commission tries to make sure that public interest organisations like us will have the same opportunities to contribute to this regulatory dialogue. However, it will not be sufficient as we will not have the same resources as bigger

stakeholders who will have a clear avenue to influence the regulatory process.

Fourth, the proposal partially aims at regulating impact assessments through TTIP and includes disconcerting provisions which provide insufficient guarantees that the EU's approach to taking decisions in the face of scientific uncertainty, based on the precautionary principle and considering hazards is preserved.

These four fundamental points enshrined in a living agreement can fundamentally undermine the EU's ability to regulate as it deems appropriate, despite the lofty assurances that the 'right to regulate' shall not be affected. Therefore the good intentions of not lowering levels of consumer protection nor to undermine the right to regulate cannot become a reality.

How our recommendations provided to the Advisory Group have been taken into account?

- *Regulatory cooperation between the EU and the US cannot be used as a tool to codify the Better Regulation agenda nor to introduce some elements of the US system of notice and comment into the EU ordinary legislative procedure.*
  Slightly addressed but some provisions are still concerning such as the possibility for stakeholders to influence the transatlantic regulatory agenda (articles 6 & 7 – good regulatory practices chapter).

- *Exchange of information between regulators must be on a voluntary basis only. Regulators should not be obliged to share draft legislative texts.*
  Partially taken into account: the text still includes binding language. Obligation of result has been carved out though. There is now a footnote stating that there is no obligation to share draft legislative proposals before their adoption (before the adoption by the College for the EU – article 4 regulatory cooperation chapter).

- *The scope of the regulatory cooperation must be confined to non-legislative acts, only to the sectors covered by TTIP, and only where there is a significant impact on transatlantic trade. A clear list of the excluded areas (such as chemicals) needs to be included in the text.*
  Partially taken into account: the scope has been reduced to the covered areas of TTIP but can still cover legislative acts in addition to non-legislative ones (article 3 regulatory cooperation chapter).

- *We agree that there should be accountability with regards to stakeholders but it should provide for better guarantees to prevent regulatory chill and increased administrative burden and costs.*
  Partially taken into account: instead of including into the legal text, there is a footnote only included which foresees from regulators to make particular efforts to seek input from stakeholders with limited

resources such as SMEs and public interest groups. (Article 5 regulatory cooperation chapter).

- *The right to regulate should be more clearly articulated and protected in the good regulatory practices chapter by duplicating article x1 of the regulatory cooperation chapter. This would be a more consistent approach.*
  Not taken into account.

- *Fundamental citizens' level of protection including of the environment, consumers and public health should prevail over facilitating trade.*
  Taken into account: It is now the first objective of both chapters (article 1 of both chapters).

- *The precautionary principle and the hazard based approach must be protected.*
  Partially taken into account: the proposal refers to the respect of the fundamental principles enshrined in the treaty (article 1 of both chapters).

- *There is no need for a heavy framework to manage the bilateral regulatory cooperation.*
  The idea of a regulatory cooperation body is no longer part of the text but will be presented as an annex to the US (annex to the regulatory cooperation chapter). However, this does not mean that there is no intention to create such a framework but that the codification may happen at a later stage of the negotiations.

- *A trade agreement is not the appropriate framework to frame internal impact assessment procedures. It will be unmanageable to take into account the US regulatory approach. The EU should keep its policy freedom to set the regulatory framework that reflects our societal approaches. There is currently no legal obligation for the Commission to make impact assessments. It would also applies for non-legislative acts, so for instance to measures implementing REACH.*
  Mostly taken into account: there is no longer a clear obligation to conduct impact assessment but a declaration of intention to do so. However there is still a request to take decision based on evidence, with strong language on data confidentially (article 8 good regulatory practices chapter).

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