

In favour of a general exception for art and culture in the TTIP

A plea from Austria's art and cultural associations

We, the undersigned members of the working group on cultural diversity at the Austrian UNESCO Commission, wish to issue this emphatic warning against the negative impact on Europe's artistic, cultural and media landscape of the planned Transatlantic Trade and Investment Partnership (TTIP) between the EU and the USA. In the tumult of discussion around the TTIP negotiations, the topics of culture and the media risk getting swept along in the negotiations - with irreversible consequences.

We therefore call urgently on political decision makers to back a general exclusion of art and culture from the scope of application of the TTIP, as only this will ensure effective protection of Europe's cultural and media diversity.

The assumption that art and culture are not affected by the TTIP is a myth.

Each book, each film, each theatre production, each music event, constitutes a cultural product with a financial value, a part of international trade and thus subject to free-trade negotiations - including the TTIP. The assumption that the TTIP negotiations will not include negotiations on the realm of art, culture and the media is a myth. The European Union's mandate does not comprise any "cultural exception", as is frequently claimed. The realm of culture is not factored out of the negotiations. The only area where an exception is provided is in audiovisual services (film, TV and radio), in the chapter on trade in services and establishment; in all other areas of the TTIP, however, such as investment protection or regulatory consistency, negotiations may indeed take place regarding audiovisual media, and over non-audiovisual media in any event.

Thus, all subsidies, regulatory measures and standards for the protection and preservation of cultural and media diversity, as well as media freedom in Europe, are on the discussion table, for in the shape of the USA, the EU faces a negotiating partner which has a fundamentally different understanding of cultural and media policy. From the US perspective, culture and media are regular trading goods which should be allowed to circulate as freely as possible on the market. Viewed from this angle, government subsidies appear merely as protectionism on economic-policy grounds, limiting free trade. By contrast, it is taken for granted in Europe that culture cannot be reduced to the level of a mere commodity, for culture is also understood as being a bearer of social values and identities, as well as aesthetic positioning. This leads to the responsibility of each state to enable cultural diversity - over and above the dictates of contemporary public taste or the interests of investors. This, however, is only possible if the state can act on matters of cultural policy. Being able to safeguard freedom in cultural policymaking, both now and in the future, is thus the highest premise for ensuring the long-term protection of diversity in art, culture and the media in Europe - including, and in particular, in free trade negotiations.

Whether, and in what manner, measures for the protection and promotion of cultural and media diversity are specifically needed and desired in individual instances is a question which must continue to be determined through the democratic decision-making process, and which may not be the outcome of trade obligations or the interpretations of international arbitration courts.

Culture must be generally exempted; vague assurances are not enough.

So far it has not been possible to determine how the European Commission intends to protect culture and media against the negative effects of the TTIP. The very few papers to have been published on the topic give great cause for concern. It would appear as if the Commission is seeking a "minimal version" which guarantees anything but effective and comprehensive protection for the promotion of cultural and media diversity in Europe, but rather causes the precise opposite.

We, the art and cultural associations of Austria, therefore seek the following:

– Legally-binding rules

Declarations of intent are not enough. The "mention" in the preamble to the TTIP agreement - as sought by the Commission - of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions is not sufficient. Reference in a preamble alone does not have any legally-binding protective force. At best, it is an aid to interpretation in the event of disputes. We must therefore additionally have clear incorporation of all exceptions for art, culture and media into the binding TTIP chapters.

– Exceptions for audiovisual AND cultural sectors

The EU mandate places the European Commission under a duty to exclude audiovisual services from the TTIP negotiations. However, this exception applies only to the audiovisual sector (film, TV and radio), and not to other cultural sectors, such as literature and the publishing sector, theatre and music performances, libraries, museums and archives. In these areas too, the TTIP should not lead to any new concessions or liberalization commitments. The exception for audiovisual services must therefore be extended to cover all cultural sectors.

– A technology-neutral definition of exceptions

Technological developments have fundamentally changed the way in which culture is created, distributed and consumed. It is not possible to predict from a present-day perspective what technologies and distribution platforms will become relevant in the next ten, twenty or thirty years. As a result, it is essential to define exceptions for culture and media on a technology-neutral basis. It must be considered beyond doubt that a book is a cultural asset, irrespective of whether it is published in print form or as an e-book. The same applies with regard to the film, TV, radio and music sectors. In view of the dominant position of US entertainment, media and internet corporations, it is precisely in these sectors that the US has a particularly keen interest in seeing the market opened up as widely as possible. With regard to online services in the realm of film, TV, radio and music, it must also be considered self-evident that these are cultural services, and not, as the USA argues, information and telecommunications services for the purpose of data transmission.

– Taking account of the breadth of measures for promoting diversity

Measures for the protection and promotion of cultural diversity, media diversity and media freedom have their origins not just in the cultural and media sectors, for regulations in other areas too are directed at standards in the cultural sphere and for the promotion of diversity, for instance in the education sector, in employment and insurance, or in the telecommunications sector (e.g. the "must-carry" provisions, which place cable network operators under a duty to include local and public-service broadcasters). The possibility must continue to exist of enacting regulations in order to ensure effective and comprehensive protection for the promotion of cultural and media diversity.

– Inclusion in all TTIP chapters

The TTIP is more than just a free trade agreement; as the negotiations stand at present, in the context of the so-called "Transatlantic partnership", investment protection clauses, measures with the aim of achieving greater regulatory compatibility, and common rules, are additionally sought. Exceptions for the purpose of protecting cultural and media diversity should therefore not be limited just to the TTIP chapter relating to market access, but must cover the TTIP's entire scope of application, failing which the planned protection measures run the danger of being entirely ineffective.

– No investment protection provisions

The TTIP does not need any provisions on investment protection or investor-state arbitration clauses. Both in the USA, and in the EU and its Member States, the principle of the rule of law applies. Likewise, both in the USA and the EU, there exist established judicial systems. Recourse to the law is open to all. Investment protection and investor-state arbitration proceedings present the risk that constitutional and legal systems could be circumvented and the ability of sovereign states to make decisions and act independently undermined.

– No negotiations on authors' rights or neighbouring rights

In an international context, copyright and neighbouring rights are negotiated within the framework of the World Intellectual Property Organization (WIPO); here, international agreements on authors' rights and neighbouring rights are concluded. As for what additional benefit a chapter in the TTIP relating to rules on authors' rights and neighbouring rights might offer, this is not clear, particularly since European authors' rights and the US copyright regime are fundamentally at variance. The basic principles of European authors' rights, which prioritize the author and the author's economic and ideal rights, are not negotiable.

We need a policy which provides strong support for art and culture in the TTIP negotiations with the aim of incorporating a general cultural exception in the TTIP.

For all of the above reasons, we call urgently on political decision makers to argue systematically and without compromise in favour of a legally-binding general exclusion from the scope of application of the TTIP for measures aimed at the protection and promotion of cultural and media diversity.

Let us never forget that both the European Union and its Member States have agreed to ensure the safeguarding of freedom in cultural policymaking also in the context of trade, and that they gave this commitment binding effect under international law upon accession to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

At stake here is not just maintenance of the status quo; also at stake is the question of whether or not, and if so, to what extent, it will still be possible in future to form culture and media policy on the basis of democratic decision-making processes. It is a question of the degree to which art and culture can in future originate and subsist, with what diversity, and under what terms and conditions. It is a question of the multiplicity and diversity of artistic, cultural and media offerings, as well as access to such offerings. It is further a question of independence and decision-making autonomy of art and culture professionals and the viability of working as an independent artist, as well as that of independent artistic and cultural establishments. It is ultimately a question of implementing the arts and media freedom laid down in the constitutions of Austria and the Member States of the European Union, as well as in the EU Charter.

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