

The Consumer Voice in Europe

HOW TO MAKE TiSA A GOOD DEAL FOR CONSUMERS

BEUC position paper on TiSA



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Summary

- BEUC believes that TiSA could bring benefits to consumers, if it is well designed, consumer oriented and if it really improves the GATS by adapting it to modern public interest trade needs. However, we are concerned about certain provisions that we can see in leaked texts of the negotiations, as they bear the risk of limiting the right of the EU and its Member States to regulate in the future. We are equally concerned about the lack of transparency of the negotiations which are unacceptable for a modern-age trade agreement. Moreover we don't see for the moment an ambition to secure concrete benefits for consumers apart, only indirectly, from lowering prices, increasing choice and boosting innovation.
- The potential benefits of TiSA for consumers could be to increase the competitive pressure and could therefore lower prices of services, such as e-commerce, telecoms and financial services, give greater choice to consumers and boosting innovation. TiSA could also contribute to improve the quality of services and promote EU's high standards. For consumers, an ideal TiSA would secure an easy and effective consumer protection, to ensure enforcement of EU consumer rights if, for example, something goes wrong after an online purchase, in case of need to contact a foreign service provider or to obtain compensation. Moreover, the agreement should prevent geoblocking and enhance data protection.
- Nevertheless, TiSA risks limiting the right of the EU and its Member States to regulate, if it is not designed carefully. Indeed, there are pressures from other parties to make domestic regulations more trade oriented and submit them to restrictive criteria, necessity tests and reviews. We are worried about the impossibility to reverse commitments on certain services. In addition, we are concerned about the possibility for stakeholders to comment on legislation before their adoption and therefore influence decision makers and potentially induce a regulatory chill. Besides, there is a risk that TiSA would also integrate insufficient protection against legal challenges from other parties contesting EU or Member States regulations affecting trade such as data protection rules, ban of financial toxic products, ambitious consumer protection for online purchases etc.
- Therefore, TiSA must be balanced, provide tangible benefits to consumers, including the protection of their rights at home, when they travel and when they shop online. Consumer protection must never be *per se* considered as being a burden to trade and fundamental rights such as privacy must not be seen as barriers to trade. Moreover, TiSA should secure the right of the EU and its Member States to regulate in the future by setting clear guidelines regarding the core text and crucial annexes like domestic regulation and transparency, as well as sectoral ones.
- Transparency in trade drastically improved with TTIP, thanks to the increased interest of EU citizens and public interest organisations in trade matters. However, there is a huge discrepancy between the level of transparency provided in TTIP and in TiSA. Only a few TiSA documents have been published and there is a lack of information on the content and progress of the negotiations. We urge to remedy to this.
- TiSA is not just another trade negotiation. The final agreement is destined to be multilateralised and to be used as a basis to define the rules of global trade in services. Hence, TiSA has to be ambitious for consumers and service providers, by making sure all actors will respect their obligations and by protecting their existing and future rights.

1. Recommendations

TiSA should deliver concrete benefits to consumers

- The EU should secure offensive consumer interests in TiSA and protect consumer rights at home, when they travel and when they shop online. Consumers should benefit from easy access to dispute resolution mechanisms, effective resolution of dispute and secured enforcement through TiSA. Ambitious provisions should be added in the core text to define applicable law for all services when directed to consumers.
- The EU should seek to include ambitious provisions on roaming, reduce geoblocking, deliver a more consumer friendly telecom market, and promote data protection rules.

Rock solid safeguards are needed to ensure the right to regulate

- The EU must include safeguards in TiSA that will protect the right to regulate in the future. Genuine consumer protection measures should not be subject to necessity tests nor considered as non-objective or unreasonable.
- The EU should carve-out any obligation to share draft regulations before their adoption. Accountability towards stakeholders should be accompanied by guarantees to prevent delaying legislative proposals.
- It is essential to assess the solidity of the general exceptions of the GATS regarding data protection and to adapt them accordingly in TiSA. The complementary safeguards on data protection should be strengthened to ensure the prevalence of fundamental rights over free trade.
- The shift from positive listing of commitments to hybrid listing should be evaluated in an impact assessment to complement the ongoing sustainable impact assessment.

TiSA should be more transparent

- Citizens want to know what is being negotiated in TiSA. The EU should enhance the level of transparency spontaneously and not wait for the general public to mistrust the negotiations to react.
- Negotiating texts, position papers, factsheet and reports of negotiating rounds should complement the documents that have been published on DG Trade website to demonstrate that trade is no longer dominated by secrecy.
- The EU could propose to set up a common website together with the US and Australia, as co-hosts of the talks, to disseminate general information about the negotiations to citizens.

The EU should engage more with citizens and public interest organisations

- EU negotiators should engage with public interests organisations to allow for constructive input. It is necessary to change the communication, trade should not be reduced to a pro and anti-debate.
- TiSA will need the support of EU citizens and their elected representatives. EU negotiators will need to take into account the resolution of the European Parliament.

2. Introduction

Further trade liberalisation in services at plurilateral level has the potential to benefit consumers if it aims at achieving ambitious and concrete outcomes for them while protecting their existing and future rights. **BEUC is in principle supportive of a TiSA agreement, but** fully aware that for this plurilateral deal to benefit consumers, **several conditions have to be met**. In this paper, we outline the conditions EU negotiators have to respect and we formulate recommendations. We focus on the core text of TiSA, in its leaked version of and on the most relevant annexes for consumers.

TiSA could bring benefits for consumers through an **increased competitive pressure** which would **lower prices** of services of interest for consumers like e-commerce, telecoms and financial services. Enhanced pressure on competition could also give **greater choice** to consumers and boost **innovation**. Moreover, it could **improve the quality** of services and **promote EU's high standards**.

Consumer redress provisions are lacking

For consumers, a good TiSA would also secure **easy access to dispute resolution mechanism** with services providers and **effective redress** if something goes wrong after contracting a service in the EU, online or abroad. Indeed, consumer protection and redress are the greatest absents in TiSA so far, this is not acceptable for a 21st century agreement. As it is a cross cutting issue, it should be addressed in provisions of the core text of the agreement.

TiSA should deliver concrete benefits to consumers

In addition, EU negotiators should aim at **delivering a more consumer friendly telecom market, including for roaming, reducing geoblocking and promoting data protection rules**. Many of the potential benefits are at this stage theoretical and, therefore, much more focus will be required on the details as negotiations progress. As for many current negotiations, the potential gains announced for TiSA are focusing on the creation of jobs and growth. Nevertheless, one must not forget that for those gains to materialize, consumers will have to use services and therefore **trust** this new plurilateral market place. To that end, they will need guarantees that their rights will be enforced.

Legal guarantees are necessary to protect current and future levels of protection

Beyond preserving consumer rights, TiSA must guarantee the right of its signatory parties to **regulate in the future**. In fact, for consumers to support TiSA, it is essential to guarantee that it will be possible to enhance levels of protection in the future. Thus, TiSA needs to improve the GATS by adapting it to modern public interests trade needs and by including **solid safeguards**, notably on **data protection**. Moreover, negotiators must prevent the toxic combination of too far reaching provisions on **transparency** and **domestic regulations** that could lead to an erosion of the right to regulate.

TiSA must be a transparent negotiation to ensure trust

In the wake of the level interest prompted by TTIP and TPP, TiSA is set to be the next trade negotiation under the spotlight. Despite some positive efforts of the Commission, including the publication of documents and engagement with civil society, the level of transparency in TiSA is far from being sufficient for citizens to know what is covered and how the talks are progressing. TiSA parties should not wait for the public opinion to ask for **more transparency** but should rather be **proactive** and pave the way to a more transparent negotiating process and hence reassure their citizens.

3. Transparency and engagement

Following the high level of interest generated by TTIP, TiSA is destined to be the next negotiation under the radar of civil society. The question is: **will transparency and engagement in TiSA be spontaneous or will it follow the same pattern than TTIP?** For the record, public interest organisations had to organise strong campaigns to obtain the existing level of access to information on TTIP and engagement with negotiators. We believe the process with TiSA should be different: secretive talks are suspicious. If there is nothing to hide, then it should be made public.

The first step to improve transparency is to **provide more information on the content and the progress of the talks**. We agree that the publication of the mandate and of the documents on DG Trade website (a concept paper, two proposals for rules and the EU initial offer) are positive initial steps towards transparency, as well as the dedicated page providing elements of information. However, if we compare the levels of transparency in the TTIP and TiSA negotiations, the difference of approach is substantial. On DG Trade website about TiSA, there is for example no concrete information about the current architecture of the agreement (a core text and 17 annexes). This is why in this paper, our analysis is notably based on leaked texts of negotiation. Needless to say that we would have preferred to base our paper on more reliable sources of information such as official EU publications.

We welcome the fact that civil society dialogue meetings are now organised to update interested stakeholders after each round. However there is no advisory group like in TTIP. Therefore, we ask for the same level of transparency and engagement in TiSA than in TTIP. This will be **key to have a fact-based debate about TiSA**¹.

¹ BEUC letter to Commissioner Cecilia Malmström asking for more transparency in TiSA (March 2015): http://www.beuc.eu/publications/beuc-x-2015-024_mgotransparency_in_tisa_negotiations.pdf

Furthermore, TiSA will need the support of EU citizens and their elected representatives to enter into force. EU negotiators will need to take into account the **recommendations of the European Parliament**.

To build trust, we believe there is a need to **change the communication** between negotiators, legislators and citizens. Indeed, in the current EU trade debate there is a dismissive atmosphere towards public interest organisations and citizens interested in trade policy. To strengthen trust in trade policy, it is essential not to build on the assumption that citizens and their representative organisations are not able to understand trade negotiations. On the contrary, they do understand TiSA documents and have, in the TTIP negotiations, demonstrated their ability to provide constructive analysis and contribute to the consistency and quality of the EU texts². **Trade should not be reduced to a pro and anti-debate.**

4. The Core text

In the leaked version of the core text, several references are made to the fact that measures and regulations taken by the parties regarding services should not be “more burdensome than necessary”. We are fully aware that this wording already exists in the GATS. We believe that TiSA is the opportunity to modify this ambiguous formulation and prevent any introduction of necessity tests for regulatory measures. Some parties to TiSA are interested in such tests as they could be used to check whether measures or regulations on services are justified or obstacles to trade. This can be applied to various consumer protection laws, including consumer redress. According to sources close to the negotiations, no agreement will be reached on the definition of the necessity test in TiSA. It means that the interpretation of the necessity and the level of the burden of measures will be left to the parties and thus to the judges or arbitrators in charge of the dispute settlement, in case of a challenge. This is very concerning and calls for a clarification in the text of the agreement. **Genuine consumer protection measures should not be regarded as a burden to trade nor subject to necessity tests.**

In addition, the core text will contain provisions on transparency regarding the laws adopted by the participating countries, linked to trade in services. The idea would be for the parties to exchange information on their planned laws and regulations to promote regulatory compatibility and to improve predictability for services stakeholders. Some parties want to introduce a notice and comments system, and to give the possibility for interested persons to comment on draft regulations that could affect trade in services. The EU must prevent this kind of provisions. Indeed, if a party were to plan to propose a necessary and pressing legislation on consumer protection, it could be deterred from including ambitious provisions following a high number of comments received from other parties and stakeholders. Moreover, authorities will need to allocate resources and time to reply to comments, which could delay, water down or even block proposals. Therefore we recommend to **carve out any obligation to exchange EU draft proposals**. Trade partners and stakeholders already have multiple opportunities to be consulted and comment on the general objectives of future regulations and measures in public meetings, through public consultation and impact assessments (see also point 6).

² Following BEUC comments on the EU position paper on cosmetics in TTIP, the Commission clarified sensitive points such as mutual recognition of banned substances, leading to reassure citizens on the EU’s intentions in TTIP. <http://www.beuc.eu/blog/the-new-eu-proposal-on-cosmetics-finally-beyond-lip-service/>

The greatest absents in the core text and in general in TiSA are **consumer protection and redress**. Indeed, services providers from TiSA parties providing a service to EU consumers will not necessarily have to comply with EU consumer law. It is not just a question of place of residence but depends upon several factors such as law applicable to consumer contracts and whether non-EU providers target EU consumers³. Moreover, even in case EU law would be applicable to such situations, it will be more complicated for the consumer, in case a dispute arises with a TiSA party, to seek redress (choice of forum clauses might localise the dispute before the courts or even arbitrators of the home country of the service provider). In addition, when a consumer needs to be compensated by a service provider who has no asset in the EU, redress is unlikely. Therefore there is no easy access to dispute resolution mechanisms nor effective redress guaranteed today for cross border services. This is an offensive consumer interest in TiSA and we urge the negotiators to pursue this concrete benefit for consumers.

Some positive elements on consumer protection are already discussed in the e-commerce annex, notably to prevent fraudulent and deceptive practices like spams, but this is not sufficient to ensure consumer rights in a plurilateral context, especially as it touches upon several sectors. Therefore, **ambitious provisions should be added in the core text to define applicable law for all services when directed to consumers**.

5. Schedule of commitments

We welcome the publication of the EU offer, it is a remarkable step towards transparency and allows civil society to have a real debate with negotiators. However, we are concerned about the shift from positive listing of commitments for both market access and national treatment to hybrid listing. The GATS was built on a positive approach in order to preserve the ability of the parties to progressively decide what they want to liberalise, and was intended to protect their right to regulate in the future. Recently, the EU has been following the same approach for market access but has started to use a negative listing approach to decide how it will treat foreign service providers, leading to the establishment of a **hybrid approach**.

By following a hybrid approach in TiSA, the EU is taking the risk of binding certain services sectors to liberalisation with no going back possible, notably through the **ratchet clause** and the **standstill clause**. EU negotiators included **safeguards** to make sure that the EU and its Member States will maintain their right to regulate, as long as it is not done in a discriminatory manner vis à vis foreign services providers. We urge the Commission to provide a **legal analysis** of the articulation of these safeguards and their capacity to truly protect the right to regulate in the future. The Commission should in particular explain more in detail⁴ how the safeguards will work in practice in case of a challenge.

³ On the [website](#) of the Commission, it is mentioned that "Your consumer rights under EU rules normally also apply to purchases from non-EU online traders targeting consumers in the EU. However, please be aware that you may have more difficulties in claiming your rights against traders based outside the EU." We believe that consumer dispute might increase in the future due to further facilitation of trade and intend to focus on the issue of consumer protection outside of the EU in cases related to TiSA but also TTIP.

⁴ On the [Q&A's about TiSA](#), on the TiSA webpage of DG Trade website, there is a succinct explanation of the safeguards protecting the right to regulate focusing on public service.

At that stage, it is not possible to anticipate the consequences for consumers of the shift from positive to hybrid listing. Therefore we ask the Commission to conduct an **impact assessment on the different listing approaches**. Such evaluation would complement the ongoing sustainable impact assessment. It should not only cover TiSA but also TTIP, CETA and focus on the implication for the right to regulate.

6. Annex on domestic regulation

This annex will be a key component of TiSA as it defines how domestic regulations of participating countries have to comply with the provisions of the agreement. We are particularly worried about the ability of the EU and its member States to maintain their right to regulate in the future. Indeed, certain provisions proposed in this annex by some parties could restrict the right of the parties to regulate in accordance with public policy objectives and favour trade oriented regulations. Some parties want to make sure that measures linked to the authorization for the supply of a service have to be based on **objective and transparent criteria**. For example, if a party were to request a foreign service provider to comply with a standard that would be higher than an international standard, it could be considered as non-objective.

Moreover, some parties are proposing that authorization procedures have to be impartial, transparent and administered in a reasonable manner. Those criteria could be interpreted in different ways in case of dispute settlement and could reduce the margin of manoeuvre of the EU during the drafting period of regulations. Therefore, this annex could be detrimental to consumers as it could deprive them from enhanced protections in the future at national and at EU level. For example if the EU were to plan to propose a legislation granting more protection to consumers regarding services in the area of contractual remedies, like the possibility to ask for repair on a product bought online without paying delivery fees, some TiSA parties could tell the EU that its planned legislation is not reasonable if applicable to a non EU provider, and deter it from proposing such an ambitious measure.

Therefore, we urge negotiators to make sure that the criteria established to assess the compliance of domestic regulations with TiSA will not undermine the ability of the EU and its Members States to adopt positive measures for consumers in the future. **Consumer protection measures *per se* should not be seen as unreasonable or non-objective.**

7. Annex on transparency

This annex is about internal transparency on domestic regulations, between the parties, with a strong push from certain countries to open it to interested persons. We are concerned about the implication of a far reaching exchange of information that could induce a regulatory chill⁵.

⁵ See [BEUC position paper on TTIP](#) and [BEUC blogpost on regulatory chill](#), as well as Alberto Alemanno, The Regulatory Cooperation Chapter of the Transatlantic Trade and Investment Partnership: Institutional Structures and Democratic Consequences.

The idea of this annex would be to establish an **exchange of information between parties regarding their planned laws**. Parties would be either encouraged or obliged to promptly publish in advance any law, regulation, procedure and administrative ruling. Moreover, there could be a possibility or an obligation to provide interested persons and other parties with the **possibility to comment** on proposed measures. If such provisions were agreed between the parties, it would lead to the introduction of a notice and comment system similar to what exists in the US. This kind of transparency mechanism could bear a risk of regulatory chill, increase the administrative burden and institutionalise lobbying. This would be negative for consumers, like explained in point 5 on domestic regulations, as it could deter the EU and Member States from adopting higher levels of protection in the future.

We welcome the fact that parties seem to have agreed to add a reference to their right to regulate in this annex, as well as the need to avoid cost of publication and not to be contrary to the public interest. However, legal provisions are necessary to ensure such political statement.

Trade partners should not have a preferential access to draft regulations compared to domestic legislators. It is necessary to refuse any obligation to exchange draft proposals. While we agree that there should be a certain level of accountability towards stakeholders, it should be accompanied by **guarantees to prevent delays** notably through abuse of commenting opportunities.

8. Annex on e-commerce

This annex could be positive to consumers if it includes a dedicated section on enforcement of consumer protection rules on the fields covered by the agreements through the **co-operation between the national enforcement authorities** of the signatory members.

We are concerned about the demands of certain parties to prohibit **data localisation requirements**, to introduce worrying security clauses and also about the solidity of the safeguards designed to protect personal data and privacy. Indeed, demands in the leaked texts refer to notions such as “no party may prevent a service supplier of another party from transferring, accessing and processing information, including personal, within or outside the party’s territory where such activity is carried out in connection with the conduct of the service supplier’s business.” This also applies to financial services (see below). The EU has not commented so far and is considering those proposals. EU negotiators believe that the general exceptions included in the core text (article XIV GATS) are strong enough to protect privacy of personal data. However, several cases invoking those exceptions have been lost in other areas, for example related to the protection of health⁶. Therefore we call on the Commission to conduct a **legal analysis of the ability of the general exceptions to guarantee that the EU data protection standards will be fully applicable to services addressed to EU citizens and to adapt the safeguards in TiSA accordingly**.

⁶ See Public citizens [analysis](#) of April 2015 on the general exceptions of the GATS in dispute settlement cases

Furthermore, we urge the EU to reject the introduction of a too far reaching **security clause**, as it could be used to circumvent data protection safeguards for national security reasons. In addition, some countries are proposing provisions on **net neutrality**. However, we consider that **trade agreement is not the adequate instrument to regulate issues related to Internet Governance**, and in particular the crucially important issue of net neutrality. Net neutrality and Internet Governance-related matters are to be addressed via open, multi-stakeholder platforms to ensure a participatory process with civil society.

Nevertheless, so far the annex seems to contain some **positive parts for consumers** notably by focusing on their wellbeing and preventing unfair practices. A specific article in this annex could also cover consumer protection and prevent on fraudulent and deceptive practices. Parties seem to want to enhance consumer welfare. We call on the Commission to build on that positive trend and to **be more ambitious regarding consumer redress**. As mentioned in point 3, ambitious provisions should be added in the core text to define applicable law for all services when directed to consumers in order to guarantee consumer rights.

In addition we call on the Commission to seek concrete benefits the e-commerce experience of consumers by **reducing geo-blocking practices**. A plurilateral marketplace would enable consumers to compare prices and buy services from all TiSA countries. But too often, business practices such as rerouting to national websites, non-delivery to certain countries and price discrimination stand in the way, are major sources of frustration. This is why the EU should seek to reduce discrimination against those wanting to purchase from other countries. Geo-blocking' is a crystal clear contradiction of the very notion of a free trade. In 2015, land borders should not be replicated online for viewing content that is available in other TiSA countries.

9. Annex on telecoms

This annex could bring the following benefits to consumers: deliver a **more consumer friendly telecom market**, including **ambitious provisions on roaming** and **stronger universal service obligations for providers**. To achieve those positive outcomes, a strong political will is needed that is currently lacking in the text.

Regarding roaming, a majority of countries including the EU is proposing cooperation to promote "transparent and reasonable rates for international mobile roaming services that can help promote the growth of trade among the parties and enhance consumer welfare." In the leaked text some countries are supporting easy access to information regarding retail rates and roaming (voice, data and text) to consumers and promoting a greater possibility of choice regarding the use of devices. We call on the Commission to support ambitious provisions on roaming and deliver a more consumer friendly telecom market.

The risks in this annex could be the introduction of compulsory review of regulations with a view to deregulate markets, and less autonomy for Member States to control service providers. Indeed, some parties would like that all telecoms regulatory bodies of TiSA parties to regularly review all regulations to determine whether they are still necessary or not. **We recommend the Commission to assess the impact of such compulsory review and not to accept any provision which could undermine EU Member States' autonomy of control.**

10. Annex on financial services

So far, we have not identified direct potential benefits for consumers in this annex apart from **financial stability**. Nevertheless, we identified several risks. We are notably concerned about the proposed provisions on personal data transfer and processing and the lack of ambition regarding the right of the EU and Member states to adopt measures for prudential reasons covering consumers. TiSA must not prevent the parties from regulating in the future, for instance to ban toxic financial products.

We are concerned about **unsatisfactory enforcement of consumer rights**, for example in the cross border sale of insurance. Some parties are proposing that authorisation to provide a financial service can only be refused for **prudential reason**: this does not cover consumer protection, only financial stability, it is a very restrictive provision. In addition, a party adopting prudential measures will have to prove that it is legitimate and that it is not just bypassing its commitments under TiSA. We urge the Commission to cover consumer protection beyond the scope of the prudential reasons and make sure that the EU and its Member States will be protected from any frivolous challenge on this issue.

Regarding **data transfer and processing**, the EU is proposing⁷, as well as other countries, to allow the transfer and processing of financial data, including **personal data**. The EU added an exemption which states “nothing in these provisions restricts the right of the parties to protect personal data, privacy and confidentiality”. We believe this safeguard is far from being sufficient to prevent challenges, especially as the text also mention that the flow of data should be free for the conduct of the ordinary business of suppliers and the safeguard must be consistent with the provisions of the agreement. We are fully aware of the fact that this is a usual wording in trade agreements but **we call on the Commission to reinforce this safeguard to ensure the prevalence of fundamental rights over free trade**.

⁷ See the published [EU proposal for an annex on financial services in TiSA](#)

Annex: BEUC explanatory note on the applicability of consumer law in the context of TiSA

TiSA is announced to offer more choice to consumer, because more services will be offered to them by foreign companies. What does this imply in terms of applicability of consumer law (information duties, delivery rules, conformity assessment, unfair contract terms, right of withdrawal, remedies, termination of contract, redress)? Different scenarios are possible:

Scenario 1: The consumer travels to a TiSA country and buys a service there (mode 2). The purchase is hypothetically made easier because of elimination of personal import duties. It makes no doubt that in this scenario, it is not the EU law, but the law of the TiSA country (or that of a federal state in the case of the US for example) that is applicable. This is consistent with normal International Private Law rules and should be consistent with legitimate expectations of buyers. It is therefore important to warn consumers about the risks that could be linked to such active behaviour. This is of course the role of consumer organisations, but it is important that official messages do not imply the absence of risk in this context while encouraging transatlantic purchases.

Scenario 2: a foreign service provider from a TiSA country invests in setting up a subsidiary in the EU and offers from that location goods and services to consumers (mode 3). In this case, EU law fully applies, of course. But EU law makes it possible for companies to choose other laws than EU ones to be applicable to contracts, including consumer contracts. This choice of law clause, very often used by companies, would be questioned, only in case of a dispute (but never ex-ante), if, where a consumer had been targeted by a company, the domestic legislation of the consumer place of residence, contains provisions that are mandatory and more protective for consumers (and only for the part concerning those provisions). These principles are included in the so called Rome I regulation. This provides already for quite a lot of opportunities for non EU law to still be applicable and also for a lot of complex questions to be raised (has there been targeting? What law is more protective for the consumer? Etc.). Therefore, even more important to have a clear messaging about the scope of protection by EU legislation.

Scenario 3: a foreign service provider on the basis of an activity still located in a TiSA country and a consumer, in the EU, conclude a contract, via online tools (mode 1). The situation becomes even more complex:

- Scenario 3a: a foreign service provider has a clear policy of targeting EU consumers (an obvious example would be a website available in specific EU languages, such as Swedish).
 - In this case the Rome I provisions as described above would be applicable, with their complexities and limitations
 - However, the question is whether this will be considered to be valid by the courts of the company's home country (probably the courts having to deal with any disputes), who might refuse to apply foreign legislation, for many reasons
- Scenario 3b : the foreign service provider does not clearly target EU consumers, just doing business as usual, but proactive consumers have found out its website (having an English speaking website does not mean a company targets UK consumers) and buy from it. However, consumers are not necessarily aware that the company is located outside their "normal" jurisdiction.

If the foreign service provider agrees to conclude such a contract (there could be geoblocking, because of the company's fear to contract outside of its home country – another question to tackle), what law is then applicable? According to Rome I, it will be the law of the country of the company. There is indeed little chance that the foreign company would provide for standard terms that would chose a law from an EU Member state. The extra complication there being of course that any choice of law clause in those contracts could refer to a specific federal state if the service provider comes from a federated TISA country, which makes access to information on consumer rights even more complicated. Clearly also a case for cooperation between regulators.

These are only preliminary reflections that can be elaborated upon. The objective of this explanatory note is to raise awareness about the importance of the applicability of consumer law. We believe that messages delivered to reassure stakeholders need to take account of these details in order to remain relevant. Application of EU consumer protection rules is far from being automatic and a taken in the context of plurilateral relationships.

END



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