

The Consumer Voice in Europe

ANALYSIS OF THE EU PROPOSAL ON GOOD REGULATORY PRACTICES AND REGULATORY COOPERATION

EU-Japan trade negotiations, May 2017



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Disclaimer

This analysis is based on the EU proposal for a chapter on good regulatory practices and regulatory cooperation to Japan published on 22 March. We acknowledge that this proposal is not a definitive version of the chapter and is very likely to evolve. This analysis contains BEUC's reaction to the proposal and recommendations to better consider the consumer interest.

General comments

General comment #1: We agree that regulators should talk to each other but this shouldn't be prescribed in a trade agreement

We agree that EU and Japanese regulators should work together to better protect consumers and facilitate their lives. Regulatory dialogues could be set up on issues such as e-commerce, telecoms, product safety, food policy, medical devices, pharmaceuticals, financial services, chemicals, transport and enforcement of consumer law. However, these dialogues must be addressed **outside of the EU-Japan trade agreement**, by experts of the respective sectors. Indeed, one of the main criticisms faced by new trade agreements is that dialogues between regulators are being defined under the overreaching objective of facilitating trade and mostly by trade negotiators. The current proposal of the EU demonstrates this tendency by placing the need to facilitate trade while preserving the public interest, and not the other way around. Dialogues between regulators should be focused on the promotion and defense of the public interest and should not be solely guided by considerations of trade facilitation.

General comment#2: Lack of consistency with other agreements

We are concerned to see that this EU proposal is very similar to old versions of the equivalent TTIP proposals. In the TTIP context, a lot of positive revisions to the original proposal were made following comments from stakeholders and the public. We stress that it is of outmost importance to apply the lessons learned in TTIP and CETA to avoid unnecessary discrepancies with similar provisions in this agreement. The Commission should modify this proposal following the same logic that was applied to the equivalent TTIP text. We refer notably here to the definition of the objectives of this chapter, its scope and to the provisions on good regulatory practices and to the structure of the regulatory dialogue.

General comment #3: Good transparency signal which must continue

We are pleased to finally have access to what the EU is proposing to Japan on certain chapters. It is also positive to be able to access the reports of the negotiating rounds. This was a long expected action. Other EU proposals to Japan must also be published all along the negotiating process, including during the consolidation phase.

Detailed analysis by article

Section A - General provisions

Article 1 - Objectives and General principles

In the context of TTIP, the regulatory cooperation chapter was revised in order to make fundamental citizens' level of protection including of the environment, consumers and public health prevail over facilitating trade. In the current EU-Japan chapter, it goes the other way around. Therefore, we urge the Commission to follow the same logic as in TTIP.

Article 3 - Scope

The present proposal reproduces a series of mistakes that were made and then corrected during the TTIP talks. This article envisages a scope that is much broader than the scope of the overall agreement itself. If it were to stay in the agreement despite our concerns, this chapter should only apply to the areas and sector covered by the agreement.

Point 2 of this article illustrates the relevance of our vision to deal with regulatory cooperation and good regulatory practices outside of this trade agreement. There could be an added value for dialogues between EU and Japanese regulators, also on areas not covered by this agreement. Such dialogues could be beneficial for consumers but again, including them in a trade context is not the only solution to create the necessary political will. The dialogues should be defined and established in a parallel framework, by experts and regulators. They should not only be defined by trade negotiators and under the sole objective of facilitating trade. There could however be a cross-reference in the agreement to these dialogues as a tool for better market convergence. This is the key to restore public trust and ensure sustainable cooperation between regulators.

Section B - Good regulatory practices

Article 4 - Internal coordination

The wording of this article could be used in another chapter of the agreement to cross reference to the need to develop and foster dialogues between regulators. The specifics of the dialogues would be established in a parallel framework, outside of the trade agreement. The cross reference in the trade agreement should stress the voluntary nature of the cooperation and could be used as a tool to create and ensure the necessary political will. Indeed, we understand that the idea behind having a specific chapter on both regulatory cooperation and good regulatory practices is to make sure that it will happen. Again, this could be counterproductive in the end as it is one of the main areas of public concern.

Therefore, we recommend to the Commission to include a voluntary reference on this issue in another part of the agreement, in a way to achieve the expected goal without adding an unnecessary layer that could jeopardize the entire trade deal in the end.

Articles 5 to 7

These articles are similar to the latest EU proposal on good regulatory practices in TTIP. In article 7 on public consultation, 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. Specific wording must be used that clarifies that the EU will remain free to follow its current public consultation system and not be obliged to share draft proposals to any person. The same would apply for the consideration of the comments received.

Article 8 - Impact Assessment

This article defines a check list to follow when carrying out impact assessment . A trade agreement is not the appropriate framework to frame internal impact assessment procedures. The EU should keep its policy freedom to set the regulatory framework that reflects our societal approaches.

Section C - Regulatory cooperation

Article 11 - Regulatory cooperation activities

We welcome that this article only plans for a voluntary dialogue between regulators and makes sure that regulators will not be obliged to share draft proposals. Nevertheless, this article is again a good example of what could be defined outside of a trade agreement as it has a lot more to do with economic governance than purely trade issues.

Section D - Institutional and Final Provisions

Article 13 Regulatory cooperation committee

There is no need for a heavy institutional framework to manage the bilateral regulatory cooperation. This demonstrates again the necessity to think out of the 'trade box' and develop a strategy to create transparent and accountable dialogues between regulators outside of trade agreements. BEUC and several other stakeholders already flagged this necessity in the context of the CETA agreement and the TTIP negotiations.

These talks with Japan provide the opportunity to apply the lessons learned and deliver a better outcome to EU citizens.



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