

TTIP is not the threat to European democracy that it is portrayed as by its opponents

 blogs.lse.ac.uk/europpblog/2015/06/15/ttip-is-not-the-threat-to-european-democracy-that-it-is-portrayed-as-by-its-opponents/

6/15/2015

On 10 June, MEPs voted to suspend a debate on the Transatlantic Trade and Investment Partnership (TTIP). As [Robert Basedow](#) writes, one of the criticisms of TTIP that has been raised is the notion that it could undermine European and American democracy by inhibiting the ability of governments to regulate in the public interest. He argues that while concerns over the degree of regulatory cooperation implied by TTIP are understandable, the envisaged provisions are unlikely to pose a substantial threat to national democracy or the ability of governments to pursue effective public policy-making.



The negotiations over the Transatlantic Trade and Investment Partnership (TTIP) between the EU and the United States have spurred the interest of the general public in trade and investment policy. In particular, the envisaged investment arbitration and protection provisions of TTIP have proven to be highly controversial. They were the hot topic of last week's [memorable session](#) of the European Parliament, where MEPs voted to suspend a debate on the current state of negotiations.

The public debate on TTIP has turned toward a second key issue – transatlantic regulatory cooperation. [Critics](#) warn that the envisaged transatlantic regulatory cooperation would weaken the role of parliaments and strengthen the influence of business in standard-setting, regulation and legislation. Regulatory cooperation may thus entail a 'regulatory chill' and harm democracy. But why do states engage in regulatory cooperation? How does regulatory cooperation work in general and under TTIP in particular? And does it indeed threaten our democracies and states' ability to pursue public policies?

TTIP and international regulatory cooperation

International regulatory cooperation seeks to promote economic growth by liberalising trade in goods and services. Due to decades of trade negotiations in the [GATT/WTO](#) and unilateral liberalisation efforts, traditional trade barriers such as tariffs have been largely dismantled and are of only small significance to trade among developed economies nowadays. Diverging laws, regulations and standards impose much higher costs on companies and economies than classic tariffs.

Laws, regulations and standards may differ across countries for two reasons. In many cases diverging laws, regulations and standards reflect diverging democratic and public policy objectives. Europeans and Americans for instance follow different approaches regarding the market admission of chemical substances. In the EU, chemical producers must show that their products do not constitute environmental or health risks. In the United States, in contrast, chemical producers may freely sell their products until scientific evidence emerges that a product represents an environmental or health hazard.

In other cases diverging laws, regulations and standards are the unintentional result of uncoordinated regulatory activity. Regulatory differences thus reflect insufficient communication among regulators. Differences in the market admission procedures for pharmaceuticals in the EU and the United States illustrate this point. Pharmaceutical experts argue that drug safety laws in the EU and the US aim for a similar level of patient safety. EU and US pharmaceutical regulators, however, prescribe different test procedures. Pharmaceutical companies therefore spend a lot of money to run through the test and market admission procedures in the US and the EU despite the fact that both systems seek to ensure the same outcome in terms of public health.

International regulatory cooperation seeks to tackle the second category of regulatory divergence. It intends to lower the administrative burden on companies and to ensure access to cheaper and better goods and services for consumers. While many believe that international regulatory cooperation was invented in the context of the TTIP negotiations, it is an old phenomenon. One may broadly distinguish between three types of regulatory cooperation.

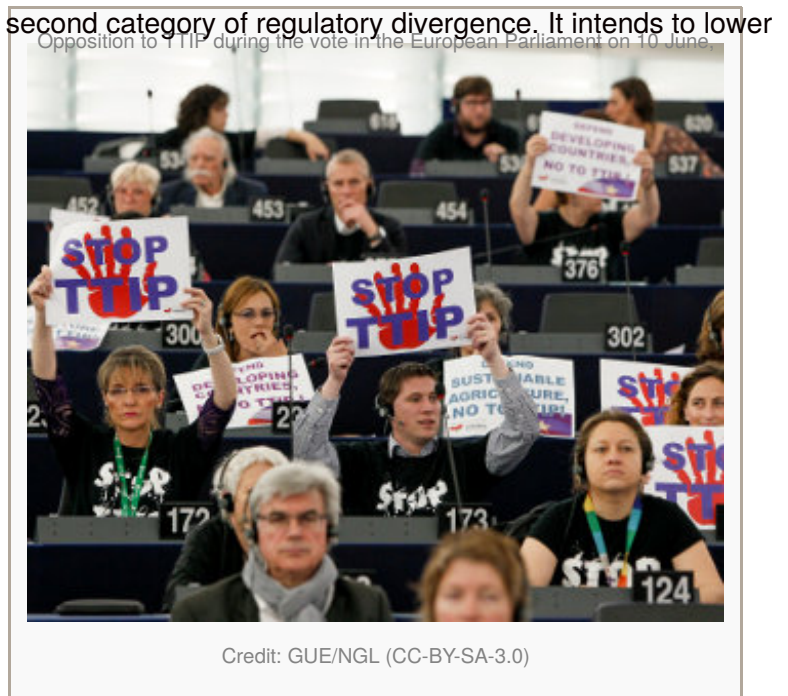
First, states frequently cooperate informally and through soft law. Regulators informally talk to each other and exchange information. The [International Competition Network](#) is an example of such informal cooperation. Second, states engage in formal cooperation through international agreements, international organisations or cooperation councils. For instance the EU and the US have signed so-called [Mutual Recognition Agreements \(MRAs\)](#) regarding technical product standards. The member states of the OECD, moreover, have been cooperating for many decades so as to approximate fiscal legislation. Australia and New Zealand have also established a regulatory cooperation council to systematically exchange information on legislation, regulation and standards.

Third, states indirectly cooperate through public-private regulatory initiatives. Business associations and non-governmental organisations have in many sectors become important rule-makers. For example non-state actors globally define accounting standards. States and international organisations encourage or – in the words of [Abbot et al.](#) – ‘orchestrate’ such private regulatory initiatives. Many states then transpose transnational private regulation into binding national rules.

How is regulatory cooperation supposed to work under TTIP? A [textual proposal](#) of the relevant chapter released by the European Commission in February 2015 outlines the envisaged general principles and functioning of transatlantic regulatory cooperation. Regulatory cooperation shall not interfere with the parties’ right to regulate and to pursue public policies. The parties, however, commit to respecting [international principles of good governance](#). Parties should conduct impact assessments for regulatory initiatives; regulation procedures should be transparent; and stakeholders – understood as civil society, trade unions, environmental advocates, business and alike – should be allowed to submit their views.

Most European countries, the European Institutions and the United States already follow these principles at the national level. The TTIP draft, furthermore, foresees the creation of a Regulatory Cooperation Body (RCB), which will be composed of European and US regulators. It shall meet regularly to discuss and exchange information on planned regulatory initiatives with the aim of avoiding the creation of unnecessary regulatory barriers. Stakeholders will be allowed to voice their concerns vis-à-vis the RCB.

So do these provisions challenge European and American democracy and the ability of parties on both sides to pursue public policies? This claims seems overstated. First, the TTIP provisions do not alter the legislative powers of national parliaments. Second, the bulk of regulation is actually carried out by specialised regulatory agencies, whose mandates and powers will not be changed under the envisaged TTIP provisions. Third, the planned TTIP provisions do not allow any party to veto or to legally challenge another party’s regulations on grounds of insufficient coordination and cooperation. Regulatory cooperation will remain soft law aiming for increasing the awareness of regulators for the international environment.



Fourth, American and European regulators already informally cooperate in many domains. The planned institutionalisation may actually strengthen democracy by increasing accountability and rendering transparent the role of non-state actors in regulatory cooperation. Fifth, the often voiced claim that business will have privileged access as well as a veto to block regulation in the RCB cannot be upheld on the basis of available draft texts of TTIP. What is more, the widespread assumption that business always favours deregulation and will push for a 'regulatory chill' is not accurate. In international contexts, businesses often lobby for maintaining demanding regulations as a market entry barrier against foreign competitors.

Ultimately, while concerns over regulatory cooperation are understandable, the envisaged TTIP provisions are not *per se* a danger to democracy and public policy. It is nevertheless evident that regulators will have to stand their ground if need be and honour their democratically determined mandates against foreign demands. Civil society and citizens will have to participate and balance out business lobbying in a future transatlantic RCB – this however is not much different from regulation and legislation at the national level.

Please read our comments policy before commenting.

Note: This article gives the views of the author, and not the position of EUROPP – European Politics and Policy, nor of the London School of Economics.

Shortened URL for this post: <http://bit.ly/1HHs9mv>

About the author

Robert Basedow – LSE

Robert Basedow is a PhD candidate in the International Relations Department at the London School of Economics. His research focuses on the EU's new international investment policy.

-

