



19.12.2017

NOTICE TO MEMBERS

(06/2017)

Subject: Report on the IMCO delegation visit to the United States on 19 – 21 September 2017

Introduction

A delegation from the Internal Market and Consumer Protection Committee visited Washington DC from 19 to 21 September 2017. The aim of this visit was to enhance the dialogue with the US Administration and stakeholders on regulatory issues in areas such EU-US regulatory cooperation in the field of digital issues and e-commerce, market access, cybersecurity, standards, consumer protection and public procurement. The Delegation met with members of the US Senate, the US Department of Commerce, as well as with consumer organisations, think tanks, start-ups and the business community, amongst others. Members were particularly interested in exchanging best practices on the different regulatory approaches tackling issues related to digital services and innovation, to promote the EU achievements in the area of consumer protection and to strengthen transatlantic cooperation. In Washington DC, the delegation met:

- the EU Ambassador to the US and the Head of the EP Washington Office (EPLO),
- Representative of the Office of the United States Trade Representative (USTR),
- The Interactive Advertising Bureau (IAB) and of representatives of US and EU high tech companies business,
- The Chairman of the Subcommittee on Communications, Technology, Innovation and Internet of the Senate Subcommittee on Commerce, Science and Transportation,
- The Representatives of the Information Technology and Innovation Foundation (ITIF),
- Representatives of the Information and Technology Institute (ITI),
- Representatives of various think tanks under the umbrella of a round table discussion

in the Atlantic Council,

- Representatives of the American National Standards Institute (ANSI)
- The US Chamber of Commerce
- Representatives of US Department of Commerce
- The Acting Chairman of the Federal Trade Commission & FTC Bureau of Consumer Protection
- The Acting Chairman of the US Consumer Product Safety Commission
- US Consumer organisations and stakeholders

Led by the Chair Anneleen Van Bossuyt (ECR), the delegation was composed of Andreas Schwab (EPP), Róza Thun und Hohenstein (EPP), António López-Istúriz White (EPP), Marlene Mizzi (S&D), Christel Schaldemose (S&D) and Mylène Troszczynski (ENF).

Summary report

Tuesday, 19 September 2017 (Washington DC)

(1) The visit started in the morning of Tuesday, 19 September with a meeting with Mr **David O' Sullivan, the EU Ambassador to the US, and Mr Antoine Ripoll, the Head of the EP Liaison Office (EPLO)**, who briefed the participants on the key developments in the past few months in the US, concerning the delay in filling key positions in the US administration and the investigation related to alleged collusion with Russian interests. He also mentioned the issues related to the Privacy shield, to EU steel exports, as well as to reviving trade deals.

Members enquired about the changes in the Trump administration, the delays in proposing new candidates for top posts and in particular regarding the possibility to nominate an Ambassador to the EU, where apparently there are clear intentions. With regard to the freezing of the talks on TTIP and the possibility for a new trade agreement, the EU Ambassador stressed that the question is rather what kind of agreement could be reached. Another issue of concern raised by Members was the policy “America first”, in particular in the area of public procurement. Concerning digital files, the Ambassador mentioned that high tech industry has much less leverage with the present US Administration and many questions are raised about the way some big companies operate on the market. As regards the US reaction to the State of the Union annual speech and debate, the Ambassador mentioned that it was read with interest.

(2) The delegation then met with the Daniel Mullaney, Assistant United States Trade Representative for Europe and the Middle East from the **Office of the USTR**, who was the Chief Representative in the TTIP negotiations for the past 4 years. Mr. Mullaney explained that the US began bilateral negotiations with Mexico, Canada, Japan and South Korea. The US is also interested in deepening the relationship with the UK, in view of the interest in a trade agreement, expressed by Theresa May.

Members insisted on the public opinion perception of the America first policy in the EU and the impact on public procurement. Mr. Mullaney noted that every party to a negotiation protects its interests first and that in a deal there should be something to gain for everybody. He also stressed that future negotiations of a trade agreement depend also on the willingness of the EU side and underlined that the Trump administration would be open to pursue negotiations, although for the moment the US sees no urgency to proceed with the talks.

Other issues, such as cooperation on standardisation, practices in China for technology transfer, China investment in the US and nomination of US Ambassador to the EU were also discussed.

(3) Exchanges with high tech companies, members of the **Interactive Advertising Bureau (IAB)** such as Google, Spotify, Amazon, as well as smaller publishers, etc. focused on how to achieve a balanced approach between more business opportunities for companies and high level of consumer rights protection, including right to one's consumers data, while keeping the SM open to all companies. While participants insisted on the importance of avoiding prescriptive regulations, which would be too expensive for US companies to comply with, including as regards personal data protection, Members insisted on the need to create trust and comfort level, highlighting that growth and innovation services must meet the standards acceptable for EU consumers.

(4). At the meeting in the **US Senate**, Members held a constructive exchange with Senator Roger Wicker, Chairman of the Subcommittee on Communications, Technology, Innovation, and the Internet, Member of the Commerce, Science, and Transportation Committee. Senator Wicker has been a strong advocate for enhancing democratic processes in certain countries in Eastern Europe. The discussion focussed on enhancing the transatlantic cooperation, in particular in the area of digital services and platforms. Members enquired about the US approach to tackle issues related to the responsibility of digital service providers and it appeared from the discussion that the US faces similar challenges in shaping policies related to platforms.

(5) The visit continued with a meeting with representatives of the **Information Technology and Innovation Foundation (ITIF)**, a think tank whose mission is to formulate, evaluate, and promote policy solutions that accelerate innovation. ITIF representatives explained that the US approach is not top down, but has a preference for a strong voluntary industry lead action that enables market incentives and encourages innovation. Ensuing discussion focussed on questions such as how to protect consumers when their data has been stolen or when a data breach happened, enforcement, and how to reconcile existing approaches on intermediaries' liabilities. ITIF representatives noted that access to data and control of data are of key importance, as well as how data is used, noting the difference between use of aggregate data versus individual data. Examples like the Equifax scandal were touched upon. Internet of Things (IoT) and impact on products, software and firmware guarantees have also been discussed. ITIF representatives expressed preference for industry driven approach with industry specific standard type of disclosure. i.e. elements that will create market incentives and different perception by consumers, such as mandatory security disclosure on a company's security practices, and information on time(frame) when the device will be secure. It was generally agreed that there is a huge potential of transatlantic cooperation as regards global trade, big data, innovation, technologies and cybersecurity.

(6) At the informal reception, organised by the Information Technology Industry Council (ITI) the Members had the chance to liaise individually with representatives of US companies from the information and communications technology industry.

Wednesday, 20 September (Washington DC)

(7) Wednesday meetings kicked off with a roundtable discussion on collaborative/sharing economy held at the **Atlantic Council**. The exchanges focussed on a number of related questions: defining platforms, the variety of models from citizens sharing to commercial enterprises, what should be elements for differentiation, recent courts' rulings and their

impact on shaping regulatory framework for platform economy, as well as the choice between regulation vs soft regulation or self-regulation. Participants agreed on the need to work together on a transatlantic solution, given the global nature of platforms, and the need to differentiate between various models, while balancing different interests and concerns, ensuring that the platforms economy remains open to new entrants and can innovate, that information is neutral (algorithms), and that existing law is observed.

(8). The delegation then met with representatives of the **American National Standards Institute (ANSI)** who briefed the Members about the role of the ANSI within the US standard setting framework. ANSI is a private sector, voluntary, non-governmental organisation bringing together various stakeholders and trade associations, individual companies, consumer representatives, and government representatives (such as OMB, Trade Representative Office). It serves as a watchdog and provides government with private sector input, ANSI is currently focussing on digital area, IoT, block chain, e-commerce and within the services area, on supply chain and unmanned services.

(9) The delegation visit continued with a meeting with a lunch discussion with business community organised by the **US Chamber of Commerce**. The discussion focussed on transatlantic regulatory cooperation, public procurement and access to Asian markets, digitization, e - commerce, platforms, standards for supply chain, and customs and Union Customs Code.

(10) At the **Department of Commerce**, the delegation was received by Dale Tashkarski, the Deputy Assistant Secretary, and met first the representatives of the **National Institute for Standards in Technology (NIST)**.

Members were in particular interested in the NIST experience and approach in developing and setting standards for digital environment, with particular accent on IoT, cybersecurity, balancing privacy and cybersecurity, and in ways for boosting transatlantic cooperation on standards. NIST representatives briefed the delegation about the department's areas of focus including IoT, connectivity, synthetic biology, machine learning and AI. With regard to cybersecurity, they explained that NIST operates within a framework where the law sets some specific requirements but the process for standards setting is voluntary. Such framework makes it possible for NIST to develop very flexible platforms and quickly respond to changing (cyber) threats. Worksheets which NIST developed for SMEs were mentioned as an example of such platform: worksheets prepared for manufacturing businesses provide, in a non-prescriptive way, tailored information on a number of issues (e.g. on password policy) while taking into account company's business type and resources. Certification as a potential approach to cybersecurity was also discussed. While recognising that accreditation and certification could be an important element of the overall policy, NIST representatives noted that, as changes occur daily, certification could create a false feeling of security, therefore they expressed preference for voluntary standards and an accountability mechanism developed by the industry itself. They further stressed the importance of information provided to consumer about the security of the product and need to educate retailers about liability associated if selling products of low standard and therefore creating incentives for not selling low quality products. With regard to consumer education and awareness, the NIST and FTC national initiative for cyber security education was mentioned.

Geoblocking and in particular the progress on that file was discussed during the second part of the meeting. The need to speed up data flows, as well as increased market access were also debated.

(11) Wednesday's programme was concluded by a meeting at the **Federal Trade Commission (FTC) and the FTC Bureau for Consumer Protection**, where the delegation met with Mrs Maureen Ohlhausen, the FTC Acting Chairman, and Mr Daniel Kaufman, the Deputy Director of the Bureau of Consumer protection, and Hugh Stevenson, the Deputy Director for International Consumer Protection. The discussion centred on consumer protection framework for digital environment and the FTC consumer protection policy, including enforcement, in connection to big data, IoT, security of consumer data, network and cybersecurity, as well as on e-commerce and online disputes, FTC approach to platforms and consumer education on cybersecurity and consumer data protection.

FTC representatives referred to recent cases Eli Lilly and TJ Max. The FTC brought an enforcement action to the two companies that failed to protect consumer data. While the FTC does not have auditing function to audit companies' practices, it has strong investigative power with a legal authority and has a team of attorneys who can conduct investigation and issue subpoenas for this purpose. Within an investigation process, FTC attorneys would consult widely with outside experts and contractors when making a determination. At the end of an investigation, the FTC may issue an order to a company, in that case, the company under the order has a duty to report on ongoing basis to show/ demonstrate compliance. Such orders could also centre on a company's data protection policy.

FTC representatives added that with regard to complaints made by individuals, the FTC may receive them, but it does not have an obligation to resolve the individual complaint. FTC acts on the legal basis of the FTC Act, which prohibits unfair and deceptive practices; the Act defines unfairness as *"engaging in behaviour that caused a damage to consumer or impacts competition"*.

With regard to competition, FTC representatives clarified that the US competition laws focuses on consumer welfare and competition process, but not on a link between consumer protection and competition, (hence the FTC does not have an authority over abuse of dominant position). On the issue of e-commerce and online disputes, the FTC informed that the agency has set up a project for filing complaints on deceptive and fraudulent practice, and pointed to the challenge of how disputes are regulated, also noting the joint project on filing complaint (the International Competition Network, (ICN)) which contains a mechanism to share information. With regard to consumer education, the FTC noted that its policy also covers business education on top of consumer one, in particular on issues such as identity theft.

Thursday, 21 September 2017 (Washington DC)

(12) The last day of the IMCO delegation visit started with meeting Ann Marie Buerkle, the Acting Chairman of the **U.S. Consumer Product Safety Commission (CPSC)**. The following issues were at the forefront of the discussion: standardisation in the area of cybersecurity, CPSC market surveillance and policy concerning low quality products and counterfeit, fertilisers, testing and Internet of Things (IoT).

The CPSC Chairman briefed the delegation about the US market surveillance and the agency's program designed for identification of non-compliant products, which is coordinated with the U.S. customs department. She mentioned CPSC testing in its laboratory in Rockville, testing seized products at the port and random testing of products against voluntary standards. The CPSC Chairman pointed to the challenge of market surveillance of non-tangible products such as software and IoT and noted some U.S. standards, such as the limit on lead or

standards for children toys that are in place and must be complied with. She noted that except for a few areas set in the law (e.g. children toys, nursery products) standards are voluntary.

The mandate of the CPSC is to ensure safety and security of products; however, the IoT and non-tangible goods require a re-consideration and an adapted approach as to how a product is controlled, how the public is educated and public awareness is raised. The CPSC has scientists and engineers looking at IoT and its impact on the conduct of business. CPSC is also focussing on the education of consumers. As regards the precautionary principle, the CPSC Chair confirmed that the US authorities rely on science to prove the risk to consumers.

(13) The IMCO delegation visit concluded with a roundtable discussion with the **US consumer organisations and stakeholders**. During the meeting Members exchanged on the different approaches in the EU and in the US to tackle issues related to consumer protection in a digital environment, big data, consumer product safety, unfair commercial practices, market surveillance, collective redress and standardisation. The need for developing education guides and programs for consumers was highlighted during the meeting.

Participants from associations, such as National Association of Consumer Advocates, National Consumers League and Consumer Federation of America took the view that in many areas consumers are better protected in the EU than in US, but in certain cases they believe they have a better regulation, for example for drugs.

Cybersecurity and the Equifax data breach were also subject to a debate, as well as the powers and responsibilities of big platforms.

Concerning the cooperation with ANSI and NIST, participants mentioned that whereas standards are critically important, especially to counterbalance vested interests of industry, they require important resources. They took the view that the consumer involvement is limited and some standards help insurance industry rather than consumers.

Topics, such as fertilisers, limits on hazardous substances (endocrine disrupters), etc. were also mentioned during the discussion.

Annex Photos







