**BREAKING: TTIP leaks confirm dangers for digital rights**

By Maryant Fernández Pérez

Today, Greenpeace has unveiled documents on the Transatlantic Trade and Investment Partnership (TTIP), including the telecommunications chapter and EU’s Tactical State of Play of March 2016.

*The leaks show an ideological drive towards deregulation and law enforcement by private companies*

, said Joe McNamee, Executive Director of European Digital Rights (EDRi).

*This would sweep away key European success stories such as open and competitive telecommunications markets and a legal framework based on transparency and the rule of law*

, he added.

EDRi has analyzed two of the leaked TTIP documents, the Telecommunications Chapter and the Tactical State of Play. Some of our most important concerns include:

**Telecommunications Chapter**

“Article X.5: Regulatory Flexibility” would give new and excessive powers to telecom regulators, including the power for any national telecom regulator to stop applying EU legislation on a service that the EU or an EU Member State “classifies as a public telecommunications service”. Regulators would have the power to ignore democratically agreed laws if it decided, entirely at its own discretion, that the enforcement was not needed to “prevent unreasonable or discriminatory practices” or, to protect consumers, for example.

“Article X.6: Review of legislation” is even worse, as it gives telecom authorities the power to repeal or modify EU legislation, without any democratic accountability or responsibility.

Article 48 refers to the confidentiality of electronic communications. While the provision states that both the EU and the USA have to ensure the confidentiality of electronic communications and related traffic data, they should do this “without restricting trade in services”. Would a data protection or privacy measure constitute a trade restriction? This point remains far from clear. What we do know is that decisions on whether data protection and privacy rules are acceptable would not be decided by the European Court of Justice and would not need to take our fundamental rights into consideration.

**EU’s tactical State of Play (March 2016)**

While the European Commission claims to be very transparent in its reports, the public receives a non-complete state of play after each round of negotiations. The leak is a real, internal state of play on the negotiations, clearly reflecting the lobbying efforts of certain parts of industry from both sides of the Atlantic. A first reading of the leak has allowed us to identified developments on digital rights that are worrisome:

Regarding data flows, no progress has been, probably because of the current discussions on the equally flawed EU-US “Privacy Shield”. The document states that these talks might be accelerated because US telecom companies are “very interested in data flows”.

On encryption, it says that the EU and the US are discussing similar wording as the one used in the Trans-Pacific Partnership (TPP). This is bad news, as explained by EDRi-member EFF.

Concerning so-called “Intellectual Property” (IP), the negotiators seem to take lobbyists’ wish list very seriously. According to the leaked report, “[w]hen confronted with EU warning that bringing sensitive proposals that would require changes in EU law to the table – and doing it at a late stage of the negotiation – may have a negative impact on stakeholders” (which would apparently not include citizens) “and has very limited chances of being accepted”, the US seemed to be prepared to depart from the model of the TPP. Among the proposals the US is thinking of tabling, it includes privatized enforcement measures, that EDRi has been criticizing since its inception because they bypass the rule of law and lead to arbitrary corporate decision-making without accountability (cf. “voluntary stakeholder initiatives”). As with ACTA, the US is strongly supportive of “voluntary initiatives” as US-based global giants already impose US copyright law on a global level. The EU (as shown by the recent leak of the Communication on Platforms) supports this approach.

In the leaks analyzed by EDRi, there is no single mention of the public, NGOs or civil society in general.