

## EU trade agreements and public services EPSU background note, March 2014

1. Why are public services and trade policy a growing issue for EPSU? In 2011 EPSU received a leaked EC 'reflections paper' on the EU's approach to public services in international trade and investment agreements. In the paper public services are viewed only in terms of their 'commercial interest,' not values. There was no reference to the Lisbon Treaty provisions and in particular the Protocol of Services of General Interest (SGI) which calls for *"a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights in public services."* Nor was there any mention of the EU Charter of fundamental rights, which provides for a right to access to public services and several provisions imply, indeed presuppose, their existence e.g., the right to education, the right of children to protection and care, the right to social and housing assistance, to healthcare, to justice, the right to a good administration. Further 'omissions' included the 2006 EC Global Europe paper, which says *"As we pursue social justice and cohesion at home, we should seek to promote our values, including social and environmental standards and cultural diversity, around the world."*<sup>1</sup> In the 2004 White Paper on Services of General Interest (SGI) the EC also argued that *"international trade agreements should not go beyond the positions agreed within the European Union."*<sup>2</sup>
2. The 2011 EC reflections paper announced that the EC wanted to shift the EU practice away from listing liberalisation obligations explicitly in the "Schedule of Commitments", i.e. to move away from a "positive" to a "negative list" approach (mirroring the Services directive). This shift facilitated liberalisation as any omission of an exemption can result in a liberalisation commitment ("list it or lose it"). As put by Canadian expert Scott Sinclair: *"With a few exceptions, trade agreements have not usually been the direct cause of privatization. Instead, their negative impacts on public services are mainly structural – confining public services within existing boundaries, increasing the bargaining power of corporations, applying 'pro-competitive' regulation to previously socialized services, and locking in future privatization."*
3. For EPSU it is important to see the broad exclusion of public services from all trade agreements, no negative listing, and no 'investor-state-dispute settlement (ISDS). Both the EU-Canada (CETA) negotiations and TTIP have adopted a 'negative list' approach which as mentioned is a radical departure from previous bilateral agreements. There has been very little democratic debate about this significant change. When we have raised concerns about the change, we are told that negative listing can be as effective 'if done properly' by Member States – but why should public services – citizens - be ransom to possible mistakes, and why should a more difficult approach be chosen over a simpler one?

---

<sup>1</sup> Global Europe – Competing in the World, p.5

<sup>2</sup> White Paper on SGI COM (2004) 374, p.20

4. On ISDS, the EC PR announcing the consultation is ISDS notes that this decision (to consult) *“reflects the Commissioner’s determination to secure the right balance between protecting European investment interests and upholding governments’ right to regulate in the public interest.”* The EC up until now has refused to acknowledge any concerns on ISDS, arguing that bilateral investment agreements are in place between some EU countries and the US. But in many parts of the world governments are pulling out of ISDS agreements. This is not the time to reinforce them – rather the EU should concentrate on promoting the effective rule of law and democratic processes.
5. One example of problems that ISDS poses for public services: in 2004 a new private health insurance scheme was set up in Slovakia and a number of private companies took advantage of this market. In 2007, the government changed and a new law was introduced limiting the role of the private sector and reinforcing solidarity mechanisms. Part of this law stated that health insurance companies must reinvest profits in the health insurance business’ (Hall 2010: 85). Following this policy change, a foreign company that owned two of the Slovakian insurance companies took action under a bilateral investment treaty between the former Czechoslovakia and the Netherlands. This example also illustrates that we are lacking EU policies that support Member States develop solidarity based health and social services systems.
6. Ultimately, in addressing issues to do with public services and trade we need to assess the EU’s own liberalization experience. Evidence increasingly shows that the private sector has not been more efficient at delivering public services. A report from the UK Institute of Government (July 2013) for example notes that after 30 years of liberalisation, there is *“still little evidence that the market - a more diverse and competitive landscape - has improved public service provision .”* (Institute of Government July 2013).
7. EPSU’s Public Services Monitor has a long list of similar research findings.<sup>3</sup> In the ‘network’ industries - energy, post, telecoms, transport - where EU liberalisation policy is in place we have seen many problems.<sup>4</sup> Partly in response to these problems however we now also see signs that citizens and local public authorities begin to question liberalization. (Re)municipalisation of services is taking place, e.g., water and energy.<sup>5</sup> The ECI [right2water campaign](#) is a further illustration that the public are concerned about how their public services are run.
8. EU policies however continue to be directed at promoting liberalisation processes as opposed to focusing on improving real outcomes for citizens. We continue to see for example endless favourable references to public-private partnerships (PPPs) in official documents, in spite of overwhelming evidence of their failure.<sup>6</sup> In one of the EC ‘non-papers’ on TTIP we see a clear reference to developing more PPPs through the negotiations. The French-German television channel Arte has produced recently an interesting series of reports that try to grasp how PPPs work, how they are financed and if the State and the citizen benefit from them. They look at PPPs in various public services including water concluding that tax-payers are paying a very high price for PPPs, for example in the [UK water industry](#) where the private sector earns 2,4 billion EUR per year in profits.<sup>7</sup>

<sup>3</sup> See EPSU public services monitor <http://www.epsu.org/r/578>

<sup>4</sup> For EPSU contributions to past EC evaluations of the performance of network industries see <http://www.epsu.org/r/232>

<sup>5</sup> Re-municipalising municipal services in Europe, a PSIRU report for EPSU, May 2012 (EN/RU) <http://www.epsu.org/a/8683>

<sup>6</sup> See Public rescue for more failed private finance institutions - a critique of the EC communication on PPPs, by David Hall, PSIRU, March 2010 (EN only) <http://www.epsu.org/a/6347>

<sup>7</sup> The infographics and reports are available in [French](#) and in [German](#) For [More on PPPs](#)

9. The aim of the EU is to be a 'social market economy' i.e., a mixed economy. There are sound economic, political and social reasons why public authorities – often local authorities - provide services directly to the citizens that elect them, and/or why they protect services from commercialization (cherry picking, two-tier service, asymmetry of information to users, need for long-term planning etc). It is also why monitoring and evaluation of the quality of public services is essential in order to guide policy choices. The EU must respect this. EU trade agreements must not be allowed to impose a restrictive framework on public services, one which prevents all countries – developing and developed alike – from protecting existing services, developing new ones and/or expanding provision

## References

- The politics of Globalization and public services: putting EU's trade and investment agenda in its place", 14 November 2013". The report and meeting documents are available at <http://www.epsu.org/a/9746>.
- Report of EPSU/AK/OGB seminar on public services and trade, November 2011 <http://www.epsu.org/a/8045>
- Paper by Markus Krajewski on EU bilateral trade agreements and public services [http://www.epsu.org/IMG/pdf/PublicServicesFTAs\\_FinalVersion.pdf](http://www.epsu.org/IMG/pdf/PublicServicesFTAs_FinalVersion.pdf)),
- PSI website section on [Trade](#)
- The Proposed EU-Canada Trade Agreement Raises Health Concerns in Both Canada and European Union <http://www.policyalternatives.ca/publications/reports/proposed-eu-canada-trade-agreement-raises-health-concerns-both-canada-and-europe>
- Facing the Facts: Guide to GATS Debate [http://www.policyalternatives.ca/sites/default/files/uploads/publications/National\\_Office\\_Pubs/facing\\_facts.pdf](http://www.policyalternatives.ca/sites/default/files/uploads/publications/National_Office_Pubs/facing_facts.pdf)
- Negotiations on Trade in Services - The Trade Unions' Position on GATS Paper prepared for the Friedrich-Ebert-Stiftung by Eva Hartmann und Christoph Scherrer April 2003 <http://library.fes.de/pdf-files/iez/global/02040.pdf>
- Intergroup Public Services - Vive les services publics canadiens libres <http://services-publics-europe.eu/fr/presse/communiqués-de-presse>
- Secrecy and alternative trade mandate: <http://www.tni.org/report/reclaiming-public-interest-europes-international-investment-policy>; <http://www.corporateeurope.org/lobbycracy>
- [Critical Assessment of the Proposed Comprehensive Economic and Trade Agreement between EU & Canada](#) January 2010 A joint position from EPSU/PSI Canadian unions
- Gradual liberalisation of public services by international trade agreements? [http://www.akeuropa.eu/en/news-full.html?cmp\\_id=7&news\\_id=1082](http://www.akeuropa.eu/en/news-full.html?cmp_id=7&news_id=1082)

## EU and public services

- Discussion document by UNISON-Ver.di: The Future of Public Services in Europe <http://www.unison.org.uk/acrobat/B1846.pdf> \_ Privatisation of Public Services and the Impact on Quality, Employment and Productivity <http://www.pique.at/>
- An alternative to the market: The social, political and economic role of public services in Europe <http://www.epsu.org/a/3056>
- EU Neighbourhood policy [EU liberalises public services beyond its borders](#)
- Liberalisation of public services: success or failure? [http://www.akeuropa.eu/en/liberalisation-of-public-services-success-or-failure.html?cmp\\_id=7&news\\_id=1034](http://www.akeuropa.eu/en/liberalisation-of-public-services-success-or-failure.html?cmp_id=7&news_id=1034)
- Quality Public Services – Action now <http://www.gpsactionnow.org/>
- [2005 EPSU paper on the reasons why Europe needs positive rules on public services \(EN, FR, DE, ES, SV\)](#) June 2005
- [Legal analysis by Professor Markus Krajewski \(2006\) on the legal questions regarding a EU legal framework on public services](#) November 2006
- [EPSU opinion and recommendations on public services following the Lisbon Treaty](#) November 2009