



Observatory for Sociopolitical Developments in Europe

Free trade agreements and social services – what does Europe think?

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Free trade agreements and social services – you may well ask what one has to do with the other. The current newsletter issued by the *Observatory for Sociopolitical Developments in Europe*¹ looks into this question. In what follows, readers are given basic information on the extent to which social services can be affected by free trade agreements, such as TTIP and CETA², the criticism that has been levelled at such treaties and the calls to protect social services. We have deliberately focused on social services, such as old people’s homes, rescue services and child care facilities. We also look at how TTIP and CETA are being discussed in the EU states of Germany, Austria, France, Finland and Sweden with regard to social services. As the organisation and financing of social services differs greatly from one country to the next, it is interesting to identify similarities and differences in the debates and in the demands being raised, such as those to protect social services.

1. Social services in the wake of free trade agreements – the key issues

International trade and investment agreements have been very much in the public eye in recent months. On hearing the acronyms TTIP or CETA for the first time, few people would probably have guessed that these agreements could potentially influence the provision, financing and organisation of social services. However, questions are now starting to mount in the social services sector about how free trade agreements might impact on social services and whether the established social systems in Europe could be put under pressure.



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1 More details at <http://www.sociopolitical-observatory.eu/en>.
 2 TTIP is the planned free trade agreement between the EU and the USA, CETA is the agreement between the EU and Canada that has already been negotiated, also see the glossary: TTIP, CETA.

In July 2013, the heads of EU governments gave the European Commission a mandate to negotiate the TTIP free trade agreement with the USA. The EU's trade commissioner, Cecilia Malmström, and US trade representative, Michael Froman, have since met every two months or so to decide which areas of their economies they want to mutually open up. Although the original goal was to conclude the negotiations by the end of 2015, the European Commission has since officially declared this date to be untenable. The pace of the talks is nevertheless to be stepped up to the end of 2015. The CETA agreement between the EU and Canada was negotiated from 2009 to 2014. The European Council and the European Parliament will probably approve CETA in the autumn of 2015. It is assumed that this will be a so-called mixed agreement.³ It will then take something like another two years for all the member states to ratify the agreement, so it is unlikely that CETA will be finally ratified before the end of 2017. Once the negotiations have been concluded, TTIP will have to go through a similar process.

Free trade agreements aim to facilitate trade between economic blocs by removing tariffs and dismantling non-tariff barriers to trade.⁴ This therefore initially involves a mutual opening of markets. As modern free trade agreements, CETA and TTIP are to additionally contain elements of cooperation in regulatory matters.

Social services could potentially be affected because the said agreements should “cover substantially all sectors and all modes of supply”.⁵ Two aspects are of central importance here: access to markets and equal treatment in markets. Firstly, market access is to be granted to foreign firms and investors. Most EU member states have already opened their markets for old people's homes in 1995 under the GATS⁶ agreement. Since then, foreign care service providers must be allowed to open an old people's home in Germany, for example, at the same conditions as comparable German providers. Secondly, equal treatment in the markets (called national treatment) in question must be ensured. In other words, foreign providers should be given the same rights and be subject to the same obligations (e.g. in fulfilling quality standards) as their European competitors. Furthermore, CETA and TTIP foresee the introduction of a regulatory committee to monitor bilateral exchanges between the regulatory authorities. This obliges both sides to mutually inform each other of existing or planned regulations (such as new standards in eldercare), whereby the regulatory powers of both sides – and, in particular, the power of ultimate decision-making by parliaments – are to be retained. Apart from opening up markets, investments are also to be protected under CETA and TTIP. Setting up an investor-state dispute settlement (ISDS) system is being negotiated here (see infobox 2). The exact arrangements for this system are being heatedly discussed at the present time.

Democratic ability to act endangered, social services under pressure?

Criticism of TTIP and CETA has centred on the lack of institutional transparency in the negotiations. In the meantime, public pressure has persuaded the new EU Commission to publish its negotiation mandate, the first negotiation texts for TTIP and the negotiated text of the CETA agreement (see collection of links).

With regard to content, the main criticism has been directed at the ISDS mechanism (see infobox 2). There are fears that the democratic power of countries to act could be effectively undermined by ISDS. It is argued that countries could shy away from passing more stringent regulations (e.g. quality standards in eldercare) because they are afraid that business undertakings could invoke ISDS to sue them for damages due to foregone profit (so called regulatory chill).⁸

Infobox 1: (social) services of general interest – the status of public services in European law

Art. 14 TFEU and Protocol No. 26 concerning services of general interest emphasise the value of public and social services in Europe. This European legislation gives member states a wide discretion in providing and organising these services. Regional and local self-administration is expressly recognised. The variety and quality of and access to social services are recognised as common values in the EU. These principles must therefore be taken into consideration when passing legislation. This has indeed been recognised in EU legislation concerning public procurement and state aid. EU law on public procurement, for example, allows not only economic criteria in public procurement decisions to be taken into account, but social criteria as well.

The European Commission's negotiation mandate for TTIP requires that the high quality of public services in the sense of Protocol No. 26 **should** be taken into account in the negotiations. Social organisations, NGOs and trade unions fear that the aforesaid principles of general interest applicable to the provision and organisation of social services, as recognised in European law, could be challenged or even undermined by TTIP and CETA. In order to allay these fears, the EU's trade commissioner, Ms Malmström, and US trade representative, Mr Froman, issued a joint declaration on 20th March 2015 on the importance of protecting public services under free trade agreements.⁷

³ See glossary: mixed agreement.

⁴ See glossary: tariff and non-tariff barriers to trade.

⁵ Negotiation guidelines for TTIP, P. 6, available at: <http://data.consilium.europa.eu/doc/document/ST-11103-2013-DCL-1/en/pdf>.

⁶ GATS = General Agreement on Trade in Services. A multilateral agreement of the World Trade Organisation (WTO).

⁷ http://europa.eu/rapid/press-release_STATEMENT-15-4646_en.htm.

⁸ See glossary: regulatory chill.

Furthermore, there are fears that the said agreements could lead to increased economy drives in the social services sector due to the requirements to liberalise certain sectors, also in connection with new legislation on public procurements and state aid. Some see a danger that the principle of protecting social services, as anchored in European law, could be called into question by the international law obligations laid down in TTIP and CETA, which would have legal priority over, say, EU legislation on public procurements (see infobox 1).

It is not possible to predict the effects that free trade agreements could have on social services. The European Commission and the German government have both emphasised that the special regulations for organising social services laid down in EU law on public procurement and state aid will not be further restricted by the said agreements. New obligations to open up markets in this sphere could be excluded and assurances have been given that the state would retain its discretion in organising social services in the future.⁹

Exclusions and other protective provisions

The EU and its member states determine the extent to which they further open their markets for other parties separately under each free trade agreement. There is the possibility to exclude entire service sectors from obligations to liberalisation.¹⁰ Also, market access and national treatment might both be subject to reservations. Thus certain social service sectors could be explicitly released from further obligations. For example, it can be determined that only specific legal forms (such as not-for-profit organisations) are approved to provide services in a sector, that public procurement processes are restricted to certain legal forms or that not-for-profit service providers are granted tax relief.¹¹

To be more specific, a review is made below of the social services sectors that are likely to be affected by the said free trade agreements and which protective provisions are foreseen. For the CETA agreement, a negotiated text has already been published. As a modern free trade agreement, it is similar in approach to TTIP. The Commission often refers to passages in the CETA text in its public statements on TTIP. This can therefore provide clues to which sectors and exceptions will be included in TTIP. CETA does not foresee any general exclusion of social services.¹² However, reservations on market access and national treatment for these services are detailed in a so-called negative list.¹³ According to this, CETA only takes into account old people's homes and convalescent and rest houses, for which market access had already been assumed under GATS. The EU further excludes social services that "receive public funding or State support in any form" from liberalisation. In consequence, only the market for privately funded old people's homes and convalescent and rest houses would be subject to the requirements of liberalisation in CETA.¹⁴ Moreover, the EU and its member states expressly reserve the right in CETA to regulate market access for private providers by means of requirement planning or by granting exclusive rights.¹⁵ Insofar as is known at present, other social services (e.g. child care facilities) will not be affected by either CETA or TTIP.

In addition to the EU-wide reservations, each member state can "list" its own reservations applicable to the country in question. Germany, for instance, has placed reservations on its obligations to open up markets for social services that are financed by the social security system and are provided in competition with other service providers.¹⁶ This means that Germany will be able to continue to link, restrict or expand specific requirements to certain eldercare services financed by the social security system in the future. The German Ministry for Economic Affairs therefore believes that the Social Benefits Delivery Triangle is not threatened. In the case of rescue services, Germany has reserved the right to continue to prefer not-for-profit organisations over other service providers.¹⁷



9 <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1115> and <http://www.bmw.de/EN/Topics/Foreign-trade/TTIP/faq,did=646478.html>.

10 This is already determined for audiovisual services in the negotiation mandate for TTIP.

11 See ways of protecting public services from liberalisation in trade agreements: Krajewski (2013): Public Services in EU Trade and Investment Agreement, available at: http://www.epsu.org/IMG/pdf/Draft_report_Markus_Krajewski_mtg14Nov2013.pdf.

12 The text includes a public utilities clause, which is also foreseen for TTIP ("services considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators" – CETA agreement, P. 1500). A footnote leads to a non-conclusive listing, which includes health services, although not explicitly social services. This clause is intended to protect public services from duties of liberalisation. It can be assumed that the broad discretion enjoyed by the member states will be emphasised here, as expressed in Art. 14 TFEU and Protocol No. 26. From a legal point of view, however, the term public utilities has not been defined either in international trade law or in EU law (see Krajewski 2013).

13 See glossary: positive list and negative list.

14 For GER see CETA agreement, P. 1575. Health services (such as hospitals) are partially affected by market access obligations. Health services are not reviewed further here due to a lack of space.

15 See CETA agreement, P. 1511.

16 See CETA agreement, P. 1574.

17 See CETA agreement, P. 1340.



With regard to TTIP, the lack of tangible results from the negotiations means that it is uncertain which of the restrictions under CETA will or could be taken up. Both the European Commission and the German Ministry for Economic Affairs believe that the provisions anchored in CETA to protect social services ought to be included in TTIP. However, as the text is still under negotiation, it remains to be seen whether the broad exclusion of both “publicly funded” social services and those that receive “State support in any form” will be taken up in the final TTIP text.

In a U-turn from the original plans, the Commission’s lead negotiator, Ignacio Bercero, has said that he would accept a negative list approach for the obligations of national treatment in TTIP. In contrast, the positive list approach remains in place for market access. Critical voices fear that as yet unknown novelties and unforeseeable developments in individual policy fields could be subject to the pressure of liberalisation in the future because they have not been explicitly listed as an exception and would therefore be automatically included in the agreement. The European Commission firstly emphasises that both a negative list and a positive list approach could achieve the same level of protection for social services. It is secondly claimed that appropriate reservations in the agreement would enable future developments to be protected.¹⁸

2. Debate in the EU member states

Against the background of the information given in the introductory article, we now want to summarise the aspects being debated in selected EU member states concerning social services in the context of TTIP and CETA. We subsequently compare these discussions in order to identify common worries and demands.

2.1 Germany – social welfare organisations as critical on-lookers

The public and political debate surrounding TTIP and CETA in Europe is most heated in Germany, where it is characterised by wide-ranging criticism. Social organisations are trying hard to come to terms with what is for them new material. As a consequence of the extensive public discussion, Sigmar Gabriel, the Minister for Economic Affairs, convened an advisory council to discuss Germany’s position on TTIP and CETA with social organisations. Industrial associations, environmental organisations and trade unions are joined in this council by the Federal Association of Non-Statutory Welfare (*Bundesarbeitsgemeinschaft der Freien Wohlfahrtspflege* – BAGFW) along with its president. The topic of public services was thematised in the meeting of 19th February 2015.¹⁹

Infobox 2: investment protection agreements and ISDS

Investment protection agreements serve to protect foreign investors and their investments in a foreign state. They often form part of trade agreements and are particularly important for investments made in countries with unreliable legal systems. Investment protection agreements are generally based on four basic guarantees: protection against discrimination; protection against dispossession (which does not serve the common good and is not adequately compensated); protection against unjust and unequal treatment; protection against capital transfers. Investment protection agreements can additionally contain Investor-State Dispute Settlement (ISDS) clauses. ISDS is an arbitration procedure under private law to settle disputes between investors and states. If one of the basic guarantees is violated, investors can then pursue legal action directly before a private, international court, instead of having to resort to domestic courts in the country in which the investment was made. However, ISDS clauses are prerequisites neither for concluding investment protection agreements nor for concluding free trade agreements.²⁰ An example of ISDS litigation is the on-going action pursued by Vattenfall, which is claiming some € 4.7 billion in damages from Germany because of the government’s recent decision to phase out nuclear power. Another is the action taken by the French energy concern Veolia, which is demanding € 82 million in damages from Egypt due to the increase in the minimum wage there. ISDS mechanisms have been criticised in the past because the decisions are said to be non-transparent, there are no opportunities to appeal and the arbitrators are often lawyers rather than fully fledged judges. Another criticism is that the high costs mean that only large enterprises are able to go down the ISDS path.

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¹⁸ See the comments (in German) made in this context by the European Commission’s head negotiator for services, Marco Dürkop, in the BMWi Advisory Board meeting of 19th February 2015, available at: www.bmwi.de/DE/Ministerium/beiraete,did=639536.html, Fünfte Beiratssitzung (19. Februar 2015): Öffentliche Daseinsvorsorge.

¹⁹ See <http://www.bmwi.de/EN/Ministry/advisory-boards,did=168270.html>.

²⁰ OECD (2012): *Investor-State Dispute Settlement, Public Consultation: 16th May – 9th July 2012*. According to the OECD, 93% of all investment protection agreements nowadays contain ISDS clauses.

BAGFW, the Workers' Welfare Association (*Arbeiterwohlfahrt – AWO*), the Paritätische (*Paritätischer Wohlfahrtsverband*) and the German Association for Public and Private Welfare (*Deutscher Verein für öffentliche und private Fürsorge – DV*) have publicly taken a stance on TTIP and CETA.²¹ They have called for an exclusion of services of general interest in the sense of Protocol No. 26 (see infobox 1). They demand that the broad discretion enjoyed by the member states today in organising their social services must be retained. BAGFW has substantiated these demands in a joint position paper with the Ministry of Economic Affairs (BMWFi).²² This demands that the provision of social services by not-for-profit organisations and its funding by the state may not be endangered. This can be regarded as substantiating the demand made in the joint position paper issued by the Confederation of German Trade Unions (*Deutsche Gewerkschaftsbund – DGB*) and the BMWFi that public services should be excluded from the negotiations.²³ If such a general exclusion proves to be unworkable, the aforesaid organisations explicitly call for a positive list approach.²⁴ They claim that this would be the only way to exclude social service sectors from the agreement in a legally safe manner and to ensure that fields of action created in the future are not automatically subject to liberalisation, as would be the case if the negative list approach is adopted.



The second main demand is that the consideration given to social criteria in public procurement processes, as laid down in European law, may not be undermined by a free trade agreement with higher priority. BAGFW, AWO, Paritätische and DV have gone on to argue that state funding of not-for-profit organisations should

not be regarded as state aid, as this could be prohibited under a free trade agreement as a distortion of competition. The European Commission and BMWFi have given assurances that the provisions concerning subsidies have been excluded from the section on services in both CETA and TTIP. Furthermore, AWO, Paritätische as well as DGB have warned that social standards (such as the child care ratio) may not be declared to be barriers to trade. They therefore reject regulatory cooperation in the form of an inter-governmental committee, which might perhaps be concerned with reconciling quality standards in eldercare under the TTIP agreement and would thus undermine the sovereign right of the states to democratically organise their social services as they see fit. It must remain the job of the member states to set standards.²⁵

The social organisations have consistently rejected the ISDS clauses proposed to date.²⁶ They see the risk of a regulatory chill.²⁷ They likewise do not want to see other legal structures being set up in parallel to domestic jurisdiction.

BMWFi has emphasised on a number of occasions that ISDS clauses are not necessary between countries that have well developed legal systems. However, the Minister of Economic Affairs, Sigmar Gabriel, has also made it clear that ISDS needs to be seen in a European context and that the wishes of other member states must also be taken into consideration.²⁸ BMWFi has therefore tabled a proposal for a modern ISDS mechanism that takes into account the qualms associated with the proposed ISDS clauses (see infobox 2). This proposes that a standing court be set up with nominated judges. It also foresees an appellate mechanism, whilst social standards are to be excluded from investment protection.²⁹

With regard to social services, the aim of BMWFi is to include all measures in TTIP that are found in CETA (e. g. protecting not-for-profit service providers) and, insofar, not to impair the existing framework for providing, financing and organising social services.

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With regard to the planned ISDS clauses in TTIP and CETA, the geopolitical context in which the negotiations are being held also needs to be considered. The EU would like to conclude a free trade agreement with China in the not-too-distant future. It would be a diplomatic insult to demand ISDS from China, whilst such was regarded as unnecessary in an agreement with the USA. Moreover, some central and eastern European EU member states are pushing for the inclusion of an ISDS clause as a means to improve their existing ISDS rules under bilateral free trade agreements concluded with the USA at earlier dates. Public criticism prompted the European Commission to launch a public consultation process in 2014, which attracted some 150,000 contributions. The EU's trade commissioner, Ms Malmström, presented the results on 13th January 2015: "The consultation clearly shows that there is a huge scepticism against the ISDS instrument".³⁰

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- 21 Core position of BAGFW of 17th September 2014 (in German), available at: www.bagfw.de/uploads/media/2014-09-17_Kernpositionen_TTIP.pdf; joint statement issued by AWO and Paritätische of 8th August 2014 (in German), available at: www.awo-informationsservice.org/uploads/media/TTIP_AWO-Paritätische_Final.pdf; statement issued by the German Association of Public and Private Welfare of 30th September 2014 (in German), available at www.deutscher-verein.de/de/download.php?file=uploads/empfehlungen-stellungnahmen/2014/dv-22-14-ttip.pdf. A joint statement issued by the leading municipal associations also called for an exclusion of public services, thereby explicitly listing social services (in German), available at: www.staedtetag.de/imperia/md/content/dst/internet/fachinformationen/2013/pp_ttip_20141001.pdf.
- 22 Joint position paper issued by BMWFi and BAGFW on the Transatlantic Trade and Investment Partnership (TTIP) of 23rd February 2015 (in German), available at: www.bagfw.de/uploads/media/150223_Gemeinsames_Positionspapier_zu_TTIP_-_BAGFW_final_02.pdf.
- 23 DGB and BMWFi: Demands on free trade talks between the EU and the USA, September 2014 (in German), available at: <http://tinyurl.com/om5clu8>.
- 24 See glossary: positive list and negative list approaches.
- 25 Also see the joint paper of several of the organisations represented on the Advisory Council: For trade policy in the interests of people and the environment, of 30th January 2015 (in German), available at: www.kulturrat.de/dokumente/ttip-verbaendepapier.pdf.
- 26 BAGFW has been involved in the online consultation regarding the ISDS system. The contribution (in German) is available here: <http://tinyurl.com/pgab7je>.
- 27 See glossary: regulatory chill.
- 28 See EurActiv.com of 28th November 2014: "Sigmar Gabriel: Germany will approve CETA".
- 29 Krajewski on behalf of the BMWFi: "Modell-Investitionsschutzvertrag mit Investor-Staat-Schiedsverfahren für Industriestaaten" (in German), available here: www.bmwfi.de/DE/Themen/Aussenwirtschaft/Freihandelsabkommen/ttip.html.
- 30 Press release of 13th January 2015, available at: http://europa.eu/rapid/press-release_IP-15-3201_en.htm.

2.2 Austria – prominent social partners demand exclusions

Social services have not played a dominant role in the debate about free trade agreements in Austria to date, although they are now being discussed by social partners, trade unions and within the Federal Association for Non-Statutory Welfare (*Bundesarbeitsgemeinschaft Freie Wohlfahrt – BAG*). The government coordinates policy in inter-ministerial meetings, which also include the Federal Ministry of Social Affairs (*Bundessozialministerium – BMASK*). The Confederation of Austrian Trade Unions (*Österreichische Gewerkschaftsbund – ÖGB*) and the Federal Chamber of Workers (*Bundesarbeiterkammer – AK*) are regularly consulted as social partners in these meetings.

In their position papers, ÖGB and AK primarily call for public services in the sense of Protocol No. 26 (see Infobox 1) to be excluded from the negotiations on TTIP and CETA.³¹ The welfare association People's Aid Austria (*Volkshilfe Österreich*) has also demanded in a statement that social services be excluded from the agreement in order to prevent economy drives in this sphere. It furthermore believes that social and health standards may not be seen as barriers to trade.³² The main criticism from social organisations in Austria is likewise directed at the ISDS clauses.³³ They say that the state must be able to react to new political challenges in the future, in order to safeguard issues of general interest. In its papers, the very active AK has called for the positive list approach to be adopted and to ensure that the state can continue to fund public services. It also demands that the consideration given to social criteria in public procurement processes and in granting exclusive rights, as laid down in European law, remains in place.³⁴

The Austrian Chancellor, Werner Faymann, took note of some of the worries expressed as early as December 2014 and supported the content of a four-party motion for resolution issued by the National Council³⁵ in September. This calls for public services to be protected by means of a public utilities clause³⁶ and an exemption for state aid. The worry is that standards in the social sphere may be undermined. However, a government resolution on the issue was blocked by ÖVP, the coalition partner of Mr Faymann's SPÖ. In various answers to questions posed in parliament, BMASK places similar requirements on a free trade agreement as those contained in the motion for resolution.³⁷ Mr Faymann has also spoken out against ISDS clauses and is critical of a regulatory committee. He sees a danger that the democratic powers of the states to act could be undermined.³⁸

2.3 France – the government's efforts to involve interest groups

Alongside the political debate surrounding TTIP, the publishing of the text of the CETA agreement has caused quite a stir in France. Questions in parliament concerning TTIP have so far mainly concerned the planned ISDS clauses.

Matthias Fekl, Minister of State for Foreign Trade, convened an advisory committee for the negotiations on TTIP and CETA in October 2014. The committee includes some 30 NGOs, trade unions and industrial associations, and thus has a broader representation than its counterpart in Germany. The public services sector has not been addressed to date. Many of the NGOs and trade unions on the committee reject the ISDS clauses. Mr Fekl reported to the committee on an informal meeting held in Rome in October. 15 EU member states called for ISDS clauses to be included in the TTIP agreement at this meeting. In contrast, the French government has major reservations against ISDS clauses.³⁹ This was also made clear in a joint statement issued by the French Ministry of Foreign Trade and the German Ministry of Economic Affairs.⁴⁰ Mr Fekl, and likewise German Minister of Economic Affairs, Sigmar Gabriel, floated the idea of an international court as a possible solution to the question of settling disputes. The French parliament has also demanded that the proposed ISDS clauses be rescinded.⁴¹

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After consultations with the member states, the EU parliament and various organisations, the Commission published a concept paper to reform investment protection and ISDS clauses early in May. This foresees setting up a standing, international court of investment with an appeals mechanism over the longer term. On the road to a multilateral solution, the EU Commission will urge for clauses to be taken up in bilateral free trade agreements (such as TTIP and CETA) to ensure that arbitrators have professional expertise and are selected from a predetermined list. An appeal mechanism should also be established during the negotiations. The aim of the European Commission is to improve ISDS mechanisms and to set a new global standard which can serve as a blueprint for other free trade agreements.⁴²

- 31 Position paper of ÖGB on EU trade agreement, of 22nd September 2014 (in German), available at: <http://tinyurl.com/ka6hpss>; AK position paper "EU Trade and Investment Agreements TTIP and CETA" of April 2015, available at: http://www.akeuropa.eu/_includes/mods/akeu/docs/main_report_en_368.pdf and AK position paper of May 2014, available at: http://www.akeuropa.eu/_includes/mods/akeu/docs/main_report_en_339.pdf.
- 32 Press release issued by People's Aid Austria on TTIP and TISA of 15th April 2015 (in German), available at: www.volkshilfe.at/presse/volkshilfe-zu-ttip-und-tisa. BAG is currently discussing topics, but has not issued any position paper to date.
- 33 The Association of public services and Public Enterprise made this rejection clear in its contribution to the Commission's ISDS public consultation. The umbrella association of Austrian Social Enterprises, in which the People's Aid Austria and Hilfswerk Austria are also organised, has backed this position.
- 34 AK position paper "EU Trade and Investment Agreements TTIP and CETA", see above.
- 35 Resolution passed by the National Council of 24th September 2014 concerning requirements on the EU's free trade agreements (in German), available at: www.parlament.gov.at/PAKT/VHG/XXV/E/E_00040/index.shtml.
- 36 See footnote 12.
- 37 For example, see the answers to the parliamentary question No. 1786/J or to question No. 865/J.
- 38 See interview with Mr Faymann in *Süddeutsche Zeitung* of 5th Mai 2015 (in German), p. 19 and the SPÖ's press release of 21st December 2014 (in German), available at: <https://spoe.at/story/steuerreform-braucht-gerechte-finanzierung>.
- 39 Comité stratégique de suivi sur les négociations commerciales société civile, of 28th and 30th October 2014 (in French), available at: www.diplomatie.gouv.fr/fr/IMG/pdf/2014-11_CR-comite-de-suivi-ONG28-30oct_2014-V2_cle4c42f9.pdf.
- 40 Joint statement of Ministère des Affaires Étrangères et du Développement Internationale and BMWi of 21st January 2015 (in French and German), available at: <http://matthias-fekl.fr/wp-content/uploads/2015/01/N%C3%A9gociations-commerciales-D%C3%A9claration-commune.pdf>.
- 41 Résolution Européenne sur le projet d'accord économique et commercial entre l'Union européenne et le Canada of 23rd November 2014, available at: www.assemblee-nationale.fr/14/pdf/ta/ta0428.pdf.
- 42 See concept paper issued by the EU's trade commissioner, Ms Malmström, on 5th May 2015, available at: http://trade.ec.europa.eu/doclib/docs/2015/may/tradoc_153408.PDF.

2.4 Finland and Sweden – rising awareness in the social sector

The debate concerning TTIP and CETA in public and in parliament has been hesitant in both Finland and Sweden. Social organisations and trade unions have only just started to think about the effects that the agreements could have on public services.

In Finland, social organisations, such as SOSTE,⁴³ along with a handful of social scientists and academics, have slowly started to ask about the impact TTIP and CETA could have on the provision of social services. The focus is on the ISDS clauses. The fear here, too, is that a regulatory chill and a more stringent economy drive could ensue. SOSTE is furthermore trying to raise awareness of the topic among politicians and the general public.

In a joint position paper, the trade unions in Sweden basically came out in favour of free trade. However, they demand that decision-making concerning the organisation and financing of public services must remain a matter for the member states. They do not want TTIP to influence national decision-making or the social criteria considered in public procurement processes. The social criteria anchored in European public procurement law may likewise not be undermined. They are critical of the ISDS clauses because they see no need for such arrangements between countries with well developed legal systems.⁴⁴



2.5 Comparing discussions and demands

Comparatively speaking, it can be said that the debate surrounding TTIP and CETA with a focus on social services is not particularly lively in Europe. Only in Germany have the social organisations really got to grips with the issue, otherwise it is often regarded as a whole by trade unions and within the framework of public services. The debates are concentrated on TTIP rather than on CETA. The governments in Germany, Austria and France are consulting with social organisations on TTIP and CETA. With reference to public or social services, governments and social organisations alike have consistently declared that the aim must be to retain the broad discretion enjoyed by sovereign states in the organisation and financing of their social services, as anchored in European law by Protocol No. 26. This particularly concerns public procurement processes and state aid. Germany, in particular, is keen to continue protecting non-statutory, not-for-profit providers. With regard to ISDS, reform is regarded as necessary in all the member states observed, in order to protect a country's ability to regulate in the general interest on a sustainable basis.

⁴³ Finnish Federation for Social Affairs and Health, www.soste.fi/soste/soste-in-english.html.

⁴⁴ Sveriges Akademikers Centralorganisation (SACO), Landsorganisationen i Sverige (LO) and Tjänstemännens Centralorganisation (TCO): "Swedish trade unions' policy on the negotiations between USA and EU on a Transatlantic Trade and Investment Partnership (TTIP)", of February 2014, available at: <http://tinyurl.com/net8ec2>.

Glossary

TTIP: *The Transatlantic Trade and Investment Partnership Agreement is a bilateral treaty between the EU and the USA. The two sides have only started to conduct meaningful negotiations on market access for services in the last of the 10 negotiation rounds held to date. In their written submissions, both sides have declared that states must continue to be able to decide on how to organise and provide public services at their own discretion.*

CETA: *The Comprehensive Economic and Trade Agreement is a bilateral treaty between the EU and Canada. Negotiations were concluded in August 2014.*

Tariff and non-tariff barriers to trade: *Barriers to trade prevent goods and services being exchanged freely between economic blocs, such as the USA and the EU. Tariff barriers to trade are tariffs levied on imports of certain goods, e. g. beef imports. Non-tariff barriers to trade are understood to be not only restrictions on the quantity of some imports, but also red tape and regulations, such as approval procedures, safety certificates or quality requirements.*

Mixed agreement: *Under EU legislation, a mixed agreement is a treaty under international law, which concerns both the EU's competence and that of its member states. For this reason, the agreement must be approved not only by the European Council and the EU Parliament, but also ratified by the parliaments of the member states.*

Positive and negative lists: *Positive and negative lists are two different approaches used in free trade agreements to determine, especially for service sectors, which areas of the market are to be opened up and which exceptions are allowed. In the positive list approach, the only sectors liberalised are those listed as "positive". The negative list approach, in contrast, basically liberalises all sectors that are not expressly included in the list.*

Regulatory chill: *Regulatory chill describes the risk that states will be reluctant to take more stringent regulatory action in the future for fear of being sued for damages before international courts. It is argued that business undertakings could interpret new regulations passed for the provision of a service (e. g. a reinvestment of profits or a certain legal form) as a violation of investment protection regulations and take legal action before international courts of arbitration. The reasoning is that the risk of such legal action could persuade the state in question not to pass the regulation in the first place.*

Collection of links

European Commission:

Information and texts on TTIP: ec.europa.eu/trade/policy/in-focus/ttip

Published negotiation texts on TTIP: trade.ec.europa.eu/doclib/press/index.cfm?id=1230

Information and texts on CETA: ec.europa.eu/trade/policy/in-focus/ceta

European Parliament:

Recommendations to the European Commission on the negotiations for TTIP: <http://tinyurl.com/ppjdcw3>

German Government:

FAQ about TTIP: www.bmwi.de/EN/Topics/Foreign-trade/TTIP/faq.did=646478.html

Information on CETA: www.bmwi.de/EN/Topics/Foreign-trade/ceta.html

Austrian Government:

Information on TTIP (in German):

www.bmwf.gv.at/Aussenwirtschaft/ttip/Seiten/default.aspx

France:

Information on trade agreements (in French): <http://tinyurl.com/oydkxvd>

Further information and position papers of European social and umbrella organisations concerning TTIP:

Social Platform: www.socialplatform.org/news_tags/ttip

Solidar: www.solidar.org/Transatlantic-Trade-and-Investment.html

European Public Services Union: www.epsu.org/r/230

Public Services International: www.world-psi.org/en/issue/Trade

The work of the Observatory for Sociopolitical Developments in Europe

Social Europe reviewed – information, agenda-setting, networking

The Observatory analyses sociopolitical trends, both in the EU member states and at a European level, and studies their impact on Germany. To this end, it prepares social scientific analyses and expert papers (mostly comparing countries), monitors and advises the German Ministry for Family Affairs, Senior Citizens, Women and Youth (BMFSFJ). In addition, the Observatory organises and conceptualises international presentations, workshops and conferences, with which it offers a networking platform to domestic and international experts.

The Observatory promotes an exchange of information and opinions on current sociopolitical topics in Europe with its comparative work and provides opportunities of mutual learning to the professional public.

Some key issues for the Observatory at present are the organisation of social services in Europe, including Islamic social services, the sociopolitical approach to dementia, plus social innovation and social entrepreneurship in a European comparison. Policies of regulating prostitution, the legal protection of LGBTI and the prevention of extremism among young people are further topics of current concern.

The results of the Observatory's work are published in the form of working papers. In addition, two newsletters appear on specific subjects each year. All the results of the Observatory's work and up-to-date information on project work are available on our Internet site: <http://www.sociopolitical-observatory.eu/en>.



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