CETA

PUBLIC SERVICES UNDER PRESSURE

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Whether it is care for the elderly, the healthcare system or public transport: Public services serve the general interest and must be accessible to all. But public services are increasingly expected to serve profit interests and open up to multinational corporations. This means security of supply, jobs and the quality of public services are at risk.

In recent decades liberalisation and privatisation in the services sector have been advanced around the globe under the motto "private over state". The free trade agreement between the EU and Canada – the Comprehensive Economic and Trade Agreement (CETA) – is a further step in this direction.

LESSONS LEARNED FROM PAST MISTAKES – FAR FROM IT

Experience with previous attempts to liberalise and privatise (e.g. water or electricity) has shown that when profits are the focus of the provision of public services rather than the common good then these services can become prohibitively expensive, universal supply is no longer guaranteed and their quality suffers. The losers are the low-income groups of the population and the working population. Well-paid work is often lost at the same time. Workers are forced into precarious or badly paid jobs.

Due to this negative experience with privatised public services, many municipalities and communities have brought services such as energy and water supply, waste disposal or local public transport back into public hands. If CETA is ratified, the option to transfer privatised services back to public control will be much more difficult (see the text box on page 4 on the standstill and ratchet clause).

Corporate lobbies see agreements such as CETA as a welcome opportunity to exert even more pressure on national governments and local communities. Their aim is not only to prevent remunicipalisation but also to expand the "business segment" of public services step by step. Liberalisation techniques such as the "negative list approach" and the "standstill and ratchet clauses", which are being applied for the first time in an EU free trade agreement, are aimed at opening up potential business areas to competition in a speedier and more permanent way. Here the European Commission has acceded to a long-standing demand of the business lobby.

However, the comprehensive liberalisation of public services is blocked, in the view of offensive commercial interests, by "unnecessary" burdens in the form of laws and regulations. However, the latter provide the framework for important social and environmental requirements such as licensing and quality requirements (e.g. for disposal) or economic needs tests (in order to restrict possible ruinous competition by undercutting). These regulations are being placed under further pressure by CETA.

NEW LIBERALISATION TECHNIQUES

NEGATIVE LISTS

According to the negative list approach, the contracting parties must define explicitly which service sectors are not covered by obligations for full liberalisation. In contrast to a positive list, which defines the sectors where markets can be opened up, a negative list goes in the opposite direction: full liberalisation and opening of markets is the standard approach and exceptions have to be justified. A comprehensive and unequivocal exception for public services would be especially important in this situation, but this is not the case with CETA.

STANDSTILL CLAUSE

The standstill clause prohibits to undo the current level of market opening and deregulation. Hence the current level of liberalisation is set in stone. This is tantamount to limiting the policy space of current and future governments, which cannot be justified.

The consequences for rail transport, for example, would be as follows: a very limited exemption has been defined in CETA for rail transport in the EU. Therefore this sector will still be opened relatively widely to Canadian companies, despite this exception.

However, a change of course by the EU cannot be excluded in the future. But if a state then wants to limit ruinous competition due to problems with private service providers (e.g. in terms of safety), it could have an unpleasant surprise. The reason is that according to the standstill clause, this would be a contravention of the free trade agreement.

RATCHET CLAUSE

If the standstill mechanism locks in the status quo of a regulation, the ratchet mechanism means that new services, future market openings and privatisations in individual countries will be automatically covered and freeze a new level of liberalisation that cannot be undone in the future. The way is clear: comprehensive liberalisation is to be permanently set in stone.

CORPORATIONS SPECIAL PRIVILEGE TO SUE ENDANGER PUBLIC SERVICES

Another element of CETA is playing an important role in pushing through this course to liberalisation: investment protection. Investment protection enables multinational corporations to sue countries for damages before special tribunals if, for example, countries pass laws regulating prices and quality that are not legitimate in the view of the companies or that cut their profits (see text box on page 6).

Public services have not been excepted from the clauses on investment protection. Hence CETA gives investors the means to continue to exert pressure on countries. Often the threat alone of using the option of these special rights is enough to make the willingness of governments to implement measures in the public interest disappear. For example, in the free trade agreement between the USA, Canada and Mexico, Canadian institutions as well as government officials report that intervention letters from American lawyers are practically an everyday occurrence regarding proposed legislation.

PUBLIC PROCUREMENT – FURTHER RESTRICTIONS LOOMING

IN-HOUSE CONTRACTS AND MORE

In the public services sector contracts from public contracting authorities awarded to other public authorities, e.g. a company owned by the principal (in-house award of contract) or other public providers play an important role. If a local authority outsources certain services such as refuse collection to a public suppliers (e.g. to a company owned by the local authority or to the refuse collection service of the adjoining local authority), then EU tender regulations do not have to be applied under certain circumstances. This is intended to promote the creation of regional added value and keep bureaucracy as minimal as possible. In order for this to remain as it is, a clear exemption would be needed in CETA for in-house arrangements, otherwise tenderers from Canada would necessarily have to be involved in the tender process. Such a procedure would not be proportionate and would be counterproductive to the aims of regional creation of value. However, only a vague and unclear exemption can be found in CETA, which calls into question previous exemptions for municipalities and communities from the tender regulations.

AWARDING CONTRACTS TO PRIVATE SUPPLIERS

For contracts awarded to private suppliers, the threshold value at which calls for tenders have to be issued across the Atlantic plays a decisive role. These threshold values are a sensitive area. They define from which contract value Canadian tenderers have to be admitted to the tender procedure. In order to safeguard the scope for action to promote regional economies and employment, it is important that foreign companies are only admitted to public tender procedures for contracts with a high value. These threshold values should have been raised a long time ago. However, this is no longer possible due to international obligations and free trade agreements such as CETA.

CETA intends to go a step further: the EU has declared its willingness to negotiate on lowering threshold values (also for social and other common services) – but only when the agreement has come into force. A review clause makes this possible.

Furthermore, even in such controversial areas as water supply, negotiations can be carried out "through the back door" via such a clause because the EU has agreed to include the sensitive area of service concessions even at a later date, when the agreement has already come into force. This also includes contracts on water supply and wastewater disposal. With the public and parliaments excluded, this could pave the way for liberalisation of the water supply.

SOCIAL CRITERIA FOR A FAIR TENDER PROCESS NOT SECURED

The EU public contract directive applies to public procurement processes. It specifically refers to the possibility of social and environmental standards as mandatory criteria when awarding contracts. CETA must not sideline this directive. To date it is highly contested whether social criteria which ensure a fair tender process and are primarily intended to prevent social dumping are even possible under CETA. This is problematic because if the price is decisive when issuing a call for tenders, the fight for contracts is often carried out on the backs of workers.

EXAMPLES OF POSSIBLE RISKS

WATER PRICES

United Utilities v. Estonia – investors go to court against rejected price increases for water. In October 2014 the partly privatised water utility company AS Tallinna Vesi, together with the British shareholder United Utilities B.V., brought an action against Estonia. The claimant accused Estonia of violating the standard of "just and equitable treatment" and denial of justice since an application by AS Tallinna Vesi to raise water prices was rejected. AS Tallinna Vesi is demanding compensation of 90 million euros for potential losses up to 2020.

SOCIAL HOUSING

There is no clear exemption here. Therefore companies could sue for damages, especially in the case of new regulations to restrict rents.

SOCIAL SERVICES/HEALTHCARE

The exceptions in social services and in the healthcare sector are not consistent. In particular, these areas are not exempted from the investment protection clauses. Private companies are active in the health and care sector (especially in physical rehabilitation clinics) in Germany and also in Austria – some of which have foreign shareholders. Therefore private companies could sue the government for compensation by means of the investor protection clauses if the requirements for performance and quality are tightened and these requirements are not considered to be legitimate.

CETA IS TTIP THROUGH THE BACK DOOR – OUR DEMANDS

Closer trade relations are to be welcomed, but not at the cost of workers. Important concerns were ignored. As it stands, CETA must not be ratified. We want fair trade!

NO PRIVILEDGED RIGHTS FOR CORPORATIONS

We continue to reject the introduction of investors' special rights to sue states (ISDS/ICS). The elements of reform that were only introduced to the CETA agreement as a result of public pressure are not sufficient because investors' special rights still take precedence over the public interest.

PUBLIC SERVICES BELONG TO ALL AND HAVE NO PLACE IN A TRADE AGREEMENT

We demand the full and unambiguous exclusion of public services such as water, energy, transport, social insurance, healthcare, municipal services, education, social services and culture from all provisions of the CETA agreement. The positive list approach must be applied to all other services.

ENFORCEABLE ILO CORE LABOUR STANDARDS

Core labour standards and more far-reaching labour standards of the ILO must be incorporated as mandatory provisions in trade agreements. Violations must be penalised.

HIGH SOCIAL, HEALTH AND ENVIRONMENTAL STANDARDS

It is to be feared that mutual recognition or the harmonisation of important prohibitions or regulations to protect health, workers or food safety will be relaxed or even repealed. There are no apparent exemptions for sensitive areas. The precautionary principle that represents the European model must be incorporated explicitly.

“CETA is TTIP through the back door!”

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