

socialplatform

Adopted by Social Platform's Steering Group

27 October 2015

POSITION PAPER

PRESERVING SERVICES OF GENERAL INTEREST IN TRADE AGREEMENTS

TABLE OF CONTENTS

KEY MESSAGES	**p. 3**
INTRODUCTION	**p. 3**
WHAT ARE THE MAIN FLAWS OF THE CURRENT APPROACH DEEMED TO PROTECT PUBLIC SERVICES IN FREE TRADE AGREEMENTS?	**p. 4**
SPECIFIC PROPOSALS	**p. 5-9**
• **I**	**p. 5**
• **II**	**p. 8**
• **III**	**p. 9**
ANNEXES	
• **A**	**p. 10**
• **B**	**p. 11**
• **C**	**p. 15**

Social Platform is the largest civil society alliance fighting for social justice and participatory democracy in Europe. Consisting of 48 pan-European networks of NGOs, Social Platform campaigns to ensure that EU policies are developed in partnership with the people they affect, respecting fundamental rights, promoting solidarity and improving lives.

Common position

KEY MESSAGES

I. *Exclude all social services, and health, education and water services of general interest, regardless if they are publicly or privately funded.*

II. *Base TTIP and TiSA negotiations on the acquis of EU secondary legislation that recognises the specific objectives, role and characteristics of Services of General (Economic) Interest.*

III. *Do not use any form of Investment protection (e.g. Investor-State Dispute Settlement - ISDS) in order to preserve the general interest.*

INTRODUCTION

Social Platform has been working on Services of General (Economic) Interest – SG(E)I[1] since its foundation. We have been advocating towards the European institutions to ensure that European Union (EU) processes recognise the specific role, objectives and features of those services, for the well-being of people living in Europe, as well as social cohesion and economic value. Our focus has mainly been on social, health, education and water services of general interest, on which our members have expertise, both as organisations representing service users and providers of SG(E)I.

These services provided directly to the person are essential for the fulfilment of basic EU objectives, such as the achievement of social, economic and territorial cohesion, social inclusion, high levels of employment and of public health, and economic growth. They are key instruments for the safeguarding of fundamental human rights and human dignity, important determinants of public health and contribute to ensuring the creation of equal opportunities for all by reducing existing inequalities, therefore enhancing the capacity of individuals to fully participate in society.[2]

Social Platform considers that these services are to be addressed to all residents to foster their full participation in society, and not just to residents who are most in need. Access to such services should be guaranteed for all.

After the adoption of the Lisbon Treaty, the primary EU law has recognised SGEI as shared values of the EU, alongside their role in promoting social and territorial cohesion and the freedom of public authorities in the provision, organisation, commissioning and funding of those services (art. 14 TFEU and Protocol 26). The aim of the EU as set out in Article 3 TEU is to promote peace, its values and the well-being of its peoples. Article 168 TFEU has a legally binding requirement that health should be included in all EU policies. In addition, the Charter of Fundamental Rights of the EU enshrines the fundamental right to access to SGEI (art. 36).[3] The supply of water is a service of general interest, as defined in the Commission communication on services of general interest. Access to services is also enshrined in the constitutions of many member states.

---

[1] Even if trade agreements use the term "public services", in this paper we prefer to use "Services of General (Economic) Interest" – SG(E)I – term used in primary and secondary EU legislation. When we use the term Services of General Interest (SGI) or Services of General Economic Interest (SGEI), it is because it is meant to refer to a specific legal category.

[2] Social Protection Committee, *A Voluntary European Quality Framework for Social Services*, p. 3

[3] The Charter also recognises the right to access to placement services (art. 29), social security and social assistance, including housing assistance (art. 34) and healthcare (art. 35).

Over the last decade much progress has also been achieved in EU secondary legislation that affects service provision and therefore SG(E)I. Nonetheless, across the EU provision of SG(E)I is far from being perfect and many people encounter various difficulties in accessing essential services in many member states.

The EU is negotiating important bilateral trade agreements with third countries, such as the Transatlantic Trade and Investment Partnership (TTIP). It also participates in multilateral trade agreements negotiations like the Trade in Services Agreement (TiSA), whose scope is very broad. The aim of free trade agreements is to remove trade barriers in a wide range of economic sectors, including services and SG(E)I. Therefore, these agreements are going to have an impact on the provision, financing and organisation of many SG(E)I. Although EU trade policy is inextricably linked to the global context, the Preamble to the WTO agreement makes it clear that trade and investment are not goals in themselves, but rather means to raise standards of living and improve well-being.[4]

While negotiating trade agreements, the EU and the other Parties of the World Trade Organisation (WTO) are bound by the General Agreement on Trade in Services (GATS). These rules were set twenty years ago and in some cases they are out-dated. TTIP and TiSA should give the opportunity to update those rules, where feasible.

The European Commission states that the approach followed by the EU in protecting public services in free trade agreements (FTAs) has never created any problem over the last twenty years. In this paper, Social Platform highlights that the approach taken so far is insufficient to fully protect SG(E)I in a way that ensures legal certainty. Therefore, we call on the European Commission, the European Parliament and member states to consider our proposals and to engage in a constructive dialogue with civil society in the ongoing negotiations.

What are the main flaws of the current approach deemed to protect public services in FTAs?

- Only services supplied in the exercise of governmental authority (in general, administration, police, and justice) are excluded from the scope of agreements. According to the definition given by GATS, which is likely to be followed in TTIP and TiSA, the SG(E)I that are partly provided commercially or in competition with private operators would definitely not be excluded.[5] In most EU countries, most SG(E)I are provided under these conditions.

- Many legal concepts used in trade agreements do not correspond to similar concepts enshrined in primary and secondary EU legislation: they are either broader and vaguer than EU legal categories or more narrowed. This does not ensure legal certainty.

- The so-called "public utilities" clause provides an exception only to the obligations on market access[6] (and not to national treatment)[7], and refers only to monopolies and exclusive rights. It does not apply to quotas or economic needs testing. The "public utilities" clause only covers Mode 3 while Mode 1 is getting more and more relevant in trade in services nowadays (see for example telemedicine).

[4] http://www.wto.org/english/docs_e/legal_e/04-wto.pdf
[5] Art. 1.3 GATS defines "services supplied in the exercise of governmental authority" as any service which is supplied "neither on a commercial basis, nor in competition with one or more service providers".
[6] In FTAs the obligation of market access prohibits a number of quantitative and qualitative market access restrictions if no specific limitations exist.
[7] The obligation on national treatment requires that foreign services and service providers are not treated less favourable than national services and service providers.

- Exclusion of social, health, education and water services is ensured only if those services are publicly funded.

- Positive listing and negative or hybrid listing only theoretically provide the same level of protection to SG(E)I.

Specific proposals:

I. Exclude all social services, and health, education and water services of general interest, regardless if they are publicly or privately funded.

Why?

- The rules that were set twenty years ago with GATS do not reflect the reality of how SG(E)I are currently funded. Nowadays, in an increasing number of member states, many social, health, education and water services which are of general interest are privately funded or supported by a hybrid of public and private sources (see Annex A). This is why the European Parliament's resolution on TTIP calls on the Commission to exclude current and future SG(E)I from the scope, irrespectively of how they are funded and organised.

- There is lack of evidence on the possible impact of these agreements on SG(E)I, namely their availability, affordability, accessibility, quality and equal treatment in access. This has the potential to undermine universal access to those services.

- The financial, economic, social and employment situation has drastically changed, both in the EU and other parts of the world. In the EU, the social, public health and employment situation has never been so alarming: more than 23 million people are unemployed and almost 123 million are at risk of poverty and social exclusion. Trade negotiations are taking place in context of a high and growing burden of chronic non-communicable diseases (NCDs), such as cardiovascular disease (CVD) and diabetes. CVD is the leading cause of death accounting 40% of all deaths in the EU. It is estimated that the cost of NCDs to the EU economy is €196 billion/year[8] and that they will cause a US$ 47 trillion global economic output loss over the period 2011-2030.[9]

- As the EU-US trade relationship is already the biggest in the world, the TTIP negotiations will have a substantial impact on future EU trade policies and FTAs. TiSA is being negotiated among 25 members of the WTO. The EU has the ambition to make it the stepping stone towards renewed impetus at WTO level. If successful, this agreement has the potential to replace GATS and to shape global trade rules.

- Liberalisation in social, health, education and water services should not exacerbate the existing dual system of service provision in the EU. Businesses are driven by a profit making logic and not by general interest. Foreign operators to a certain extent already operate within the EU in some sectors of SGEI and this has led to very mixed results. Businesses tend to provide services in urban and wealthy areas and invest in the most profitable sub-sectors. If SG(E)I are not fully excluded in an unequivocal way, TTIP and TiSA will increase the tendency to treat those services as commodities and to call on people to pay out of their own pocket. This people's right to access should be guaranteed by public authorities.

[8] Nichols M, Townsend, N, Scarborough P, Luengo-Fernandez R, Real J, Gray A, Rayner M (2012); European Cardiovascular Disease Statistics 2012. European Heart Network, Brussels, European Society of Cardiology, Sophia Antipolis - http://www.ehnheart.org/cvd-statistics.html

[9] World Economic Forum and Harvard School of Public Health

There is a likely consequence that public authorities and non-profit service providers will be put under increasing pressure and confined to providing services only to target groups with complex social needs and located in peripheral, rural and poor areas that are not attractive for businesses. Ultimately, the creation of service provision targeted to specific groups and not to the whole population will jeopardise the role that SG(E)I play in promoting social inclusion and cohesion and in reducing inequalities among people and regions.

- The Court of Justice of the European Union (EUCJ) has consistently ruled that requirements related to public policies (such as public health, social security, and public housing policies) constitute overriding reasons in the public interest, thus justifying restrictions to the freedom of establishment and movement. The Court has also considered the risk of seriously undermining the financial balance of social policies as overriding reason in the public interest.[10]

- SG(E)I require state regulation, to ensure a high level of quality, safety and affordability, equal treatment and universal access, as provided in Protocol 26. It is therefore essential that governments' right to regulate - which includes the above mentioned - takes precedence over commitments taken by the Parties.

- SG(E)I constantly change due to societal, social, environmental and technological change. A full up-to-date listing is practically impossible. Defining which services have a mission of general interest is a member state's competence. The recent economic, migration and asylum crises have testified to the ability of civil society and the social economy to develop new services - often funded with own resources - in response to emerging needs in local communities. This expertise is a valuable resource that needs to be preserved by trade agreements. If negative and hybrid listing is used, new services fall immediately in their scope, thus jeopardising the capacity of civil society and social economy to fulfil their mission.

- Water is a public good, not a commodity. In 2010, the United Nations General Assembly explicitly recognized the human right to water and sanitation. It also acknowledged that clean drinking water and sanitation are essential to the realisation of all human rights (Resolution 64/292).[11] No access to drinking water and sanitation for people in the EU constitutes a deprivation of a precondition of good health status. The Commission has the task to contribute to the efforts of member states in ensuring appropriate access to water. Access to safe and clean drinking water and sanitation services cannot depend on how much money people have or in which neighbourhood they happen to live.

Our recommendations:

To the European Commission and the European Parliament:

- Include in TTIP and TiSA, and in future FTAs, a "golden clause" for Services of General Interest. Nothing in these agreements shall be interpreted as implying any right for any party to undermine, put in question or jeopardy the right of national, regional and local public authorities to regulate Services of General Interest complying with EU rules (see ANNEX B for a proposed text).

- To ensure a broad carve-out of SG(E)I, do not limit the "public utilities clause" when service suppliers are present in the territory of the Party of the agreement (mode III of provision) and extend it to cross-border provision (mode I). Extend

[10] See for example Case C-372/04 *Watts* [2006] ECR I-4325, paragraph 103, in relation to a social security system; case C-567/07, paragraph 30 and 31, about public housing policy.
[11] UN General Assembly Resolution A/64/L.63/Rev.1

the "public utilities clause" to quotas or economic needs testing, and not just to monopolies and exclusive rights. Cross-border provision is increasing, especially in the health and education sectors. In addition, explicitly include social services in the non-exhaustive list of services that are usually mentioned under the "public utilities clause" (currently only under mode III).[12]

- To ensure a broad protection of all social services, and health, education and water services of general interest, include in both TTIP and TiSA a clear definition of what "state support in any form" means. Ensure that this term includes SG(E)I that have a mission of general interest and are privately funded or by a mix of private and public sources. State aid discipline should be used as reference to govern the regulatory activity of public authorities while determining the general interest of a service.

- Ensure in an unequivocal way the exclusion of present and future SG(E)I with a positive list in both agreements andin future FTAs, both in market access and national treatment. Indeed, GATS provided for positive listing for both. The use of negative listing[13] adopted in the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada should be avoided. SG(E)I are subject to constant changes. New services should be treated in the same way as the services of the sector to which they belong. With negative and hybrid listing, this becomes impossible.

- If negative listing or hybrid listing are used – which is something that we do not recommend - do not use "standstill" and "ratchet" clauses. Those clauses entail that regulations can only be amended in a way that leads to more liberalisation and not less. They put a limit to the future capacity of public authorities to discriminate against foreign providers, if that happened to be necessary for reasons of general interest.

- Define governments' right to regulate. Clearly state that nothing in TTIP and TiSA – and future FTAs - should limit governments' right to regulate and that, it should prevail over the commitments of the Parties.[14] Just "recognising" the right to regulate does not establish any precedence of such right over the commitments a Party has undertaken in a trade agreement.[15] The closed list of public policy objectives listed by GATS Article XIV that can prevail over the commitments of a Party in a trade agreement is too limited. Only one of 40 attempts to use GATT Article XX and GATS Article XIV at the WTO has ever succeeded due to the high threshold contained within the exception.[16] It fails to cover the objectives and the

[12] The so-called "public utilities clause" refers to "Activities considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators". The footnotes specify a non-exhaustive list of services that does not include social services (in TTIP, Annex III of the Services and Investment Offer of the EU, p. 119; in CETA, EU Annex II, Reservations Applicable throughout the EU (applicable to all EU Member States unless otherwise indicated), p. 1500; in TiSA, p. 38).

[13] Negative listing means that all areas fall under the scope of the agreement and therefore shall be liberalised if they are not explicitly listed in the annexes providing "reservations" (exclusions).

[14] In GATS a definition of governments' right to regulate is provided by Article XIV. It provides that a Party can adopt measures that are in violation of the commitments of the agreement provided that (i) such measures pursue a closed list of objectives (protection of public morals, maintenance of public order, protection of human, animal or plant life or health, prevention of fraud, protection or privacy of individuals, safety), (ii) the measure is necessary for the objective pursued (necessity test), (iii) the measure does not constitute a disguised restriction on trade or an arbitrary and unjustifiable discrimination.

[15] In the Comprehensive Economic and Trade Agreement (CETA), the right to regulate has been included in the preamble and in the chapters on environment and labour, but not in the investment chapter. This does not legally protect governments' right to regulate.

[16] Mandal S et al (2009). Block, amend, delay: tobacco industry efforts to influence the European Union's Tobacco Products Directive (2001/37/EC). Available here.

social function pursued by essential SG(E)I. In addition, the necessity test is a tough test for a measure to pass.[17]

- To ensure a broader interpretation of the exception clause for services supplied in the exercise of governmental authority, add the qualification "for example" that was used in the EU-Central America free trade agreement.[18]

- Launch independent social impact assessment studies about the possible impact of TTIP and TiSA on SG(E)I, including social, health, education and water services.

To member states:

- When member states decide to make any commitment regarding social, health, education and water services, by derogating from the approach of the EU, national Parliaments and all relevant Ministries should take part in the negotiations. A public consultation should be launched to reach relevant stakeholders and ordinary citizens. This would ensure that national commitments happen in a transparent way.

II. Base TTIP and TiSA negotiations on the *acquis* of EU secondary legislation that recognises the specific objectives, role and characteristics of Services of General (Economic) Interest

Why?

- In line with art 3 TEU, art.7 and 168 TFEU, it is important that the European Commission ensures that the legal texts of on-going and future FTAs are unequivocally in line with existing secondary law that recognises the role and specificities of SG(E)I. This should avoid creating conflicts between international agreements and the EU *acquis*: namely, the Services Directive - 2006/123/EC, the Public Procurement Directive - 2014/24/EU, the Concession Contracts Directive - 2014/23/EU, The Water Framework Directive - 2000/60/EC, the Drinking Water Directive - 98/83/EC, the Urban Wastewater Treatment Directive -91/271/EEC, and the Almunia package on state aid applicable to SGEI.

- EU secondary law that recognises the specific characteristics of SG(E)I and of Social Services of General Interest (SSGI), on which member states have agreed upon, should be the red line which negotiations cannot cross. Those laws are the result of a wide political and legal debate that has led to well-balanced rules governing those services.

- The social and healthcare sectors benefit from exemptions in the state aids regulation. They are justified by the competence of the member states to regulate the enterprises entrusted with the operation of SGEI, and the mission of SGEI itself. It is also recognised that social services and social housing provision do not affect trade within the EU given the local nature of their provision.

- FTAs, alongside removing barriers to trade in goods and services, should have the aim to promote EU values and standards, including social and environmental standards, public health promotion, decent work and respect of fundamental rights, to improve the lives of people living outside the EU.

[17] Out of 45 disputes settlement cases both under GATS art. XIV and GATT art. XX, only two have been successful, while the majority failed the necessity test.
[18] See Krajewski and Kynast, *Impact of TTIP on the Legal Framework for Public Services in Europe*, Hans Böckler Stiftung, 1 October 2014.

Our recommendations to the European Commission, the European Parliament and member states:

- Embrace in the government procurement chapters of TTIP and TiSA the EU procurement rules laid down by Directive 2014/24/EU. In particular, the following provisions should not be affected: in-house provisions; the possibility to use social, innovative and environmental considerations in award criteria and at other stages of the procedures; the reserved contracts to support employment opportunities for disabled and disadvantaged persons; the light regime for social and health services; and labour law enforcement.[19]

- Set thresholds higher than the ones provided in Directive 2014/24/EU for government procurement in TTIP and TiSA, to comply with the Directive that recommends the Commission to promote higher thresholds in international agreements (art. 92 and recital 18).

- Provide a definition of "investment" in the investment chapters to ensure that concessions awarded within the EU would be not subject to the rules laid down in the investment chapters.

- Use positive listing in government procurement chapters, so that countries can indicate to which central and sub-central agencies they agree to commit to liberalisations.

- The exceptions foreseen in the Services Directive 2006/123/EC for healthcare and social services (art. 2), and by extension for education services, should be integrated in the same way in trade agreements by the means of reservations.

- Fully translate art. 106 TFEU in TTIP and TiSA and exclude the subsidies chapter from the scope of investment portection in TTIP.

III. Do not use any form of Investment Protection (including Investor-State Dispute Settlement (ISDS)) (EPHA) in order to preserve the general interest.

To ensure that the chapter on investment protection does not restrict governments' right to regulate, exception clauses on SG(E)I should be foreseen.[20]

It seems that TiSA will have a state-to-state dispute settlement mechanism. However, TiSA Parties which have bilateral investment agreements between themselves could invoke the ISDS mechanisms foreseen in those agreements in disputes that arise in the context of TiSA through most-favoured nation (MFN) clauses. The latter are clauses that oblige a Party to extend to the other Parties to an agreement the best treatment granted to a country.

Therefore, clauses that would exclude the possibility to make use of the MFN clause in relation to bilateral investment agreements should be included in TiSA. The same risk is present with CETA.

[19] For example, CETA does not specify that award criteria for the most economically advantageous tender can contain social, environmental and innovative award criteria.
[20] This is to avoid, for example, that laws that impose public service obligations on foreign investors would not be considered as in violation of fair and equitable treatment. Or that setting price ceiling is considered indirect expropriation, if it substantially reduces the value of a foreign investment. Source: Krajewski and Kynast, *Ibid.*, Hans Böcler Stiftung, p. 31.

ANNEX A

Proposal of "golden clause" for Services of General Interest in the Trade in Services Agreement (TISA) and in the Transatlantic Trade and Investment Partnership (TTIP)

"Nothing in this agreement shall be interpreted as restricting or adversely affecting the provision of services of general interest, whether economic or non-economic, in accordance with the principles as laid down by protocol 26, especially regarding a high level of quality, safety and affordability, equal treatment and the promotion of universal access and of user rights.

Nothing in this agreement shall be interpreted as restricting or adversely affecting the essential role and the wide discretion of national, regional and local authorities in:

- *defining the services which they consider as being delivered in the general interest*
- *providing, commissioning and organising services of general economic and interest as closely as possible to the needs of the users*
- *defining whether these services are open to competition*
- *decide whether these services are publicly or privately funded.*

The provisions of this agreement do not affect in any way the competence of Member States to provide, commission and organise services of general interest in compliance with EU rules.

Nothing in this agreement shall be interpreted as implying any right for any party to undermine, put in question or jeopardy the right of national, regional and local public authorities to regulate Services of General Interest complying with EU rules. Nothing in this agreement should lead to the decrease of the rules and standards established by the EU or by member states (especially standards to protect the environment, health, consumers, social cohesion, labour standards, and public procurement rules). This agreement should aim at the promotion of fundamental rights as enshrined in the Charter of fundamental rights of the EU and other relevant international human rights conventions."

ANNEX B

Examples of social, health and education services of general interest provided by non-profit organisations which are privately funded or by a mix of public and private sources

SOCIAL SERVICES

Based on the 2011 ASISP[21] country reports that assess the socio-economic impact of social reforms, we can identify two main groups of countries:

1. Member states with limited expenditure reductions in social services (Denmark, Germany, Sweden, Finland, Austria, Belgium and France)

2. Member states severely impacted by the budget cuts in social services (Baltic States, Bulgaria, Greece, Hungary, Ireland, Italy, Portugal, Romania, Spain and the UK).

Social housing (from our member Housing Europe[22])

In most EU countries public funding does not fully cover the costs involved in social housing provision, except where the share of social housing is extremely small and only provided directly by municipalities, as is the case in some Eastern European countries such as Estonia, Lithuania, Romania, Slovakia. On the contrary, access to private funding – either through borrowing from banks or in some cases directly from the capital markets - is gaining importance in the financing of social housing. For instance:

- In England, under the current Affordable Homes Programme, housing associations must finance 86% of the new construction cost for social housing, as only 14% of the cost is covered by government grant. Private borrowing used to be mainly from banks, but increasingly housing associations are issuing bonds as a way to raise funding.

- In the Netherlands, financing of new social housing projects by housing corporations mainly consists of bank loans (about 70-80% of the project cost on average), and housing associations' own equity. Social housing organisations have access to a three-layer security scheme to guarantee the loans they contract with banks to finance their social housing activities. While the first two security mechanisms of this system are set up and financed collectively by housing corporations, the Dutch state and municipalities come only as a last resort guarantor.

- In Finland, the social housing fund (ARA) grants public guarantees and interest subsidies on loans provided by the private sector for social housing construction.

- In Ireland, where previously grants up to 100% of a project cost were available to approved housing bodies, direct public funding has been replaced almost entirely by a model based on private borrowing since 2011.

[21] ASISP stands for Analytical Support on the Socio-Economic Impact of Social Protection Reforms.
[22] For further information see 'Housing Europe Review 2012: the nuts and bolts of social housing' and 'Study on financing social housing in 6 countries', published by Housing Europe Observatory.

Support services for people or groups who are marginalised or excluded or hit the most by the economic crisis (from our member Caritas Europa[23])

- Italy: several Italian Caritas Member Organisations provide microcredit, economic and financial advice to families hit by the economic crisis. This service is funded by the means of a special Caritas solidarity fund, supported by Diocesan funds and sometimes by banks, foundations and municipal social service funds.

- Italy: Caritas Social Markets ("Empori della Solidarietà"), supported by Diocesan funds, food companies, supermarket chains (and sometimes by bank foundations and social service funds). They are supermarkets addressed to people and families in difficult and uncomfortable situations for a defined period of time.

- Italy: Caritas medical clinics, supported by Diocesan funds, to give an immediate medical response to people or groups who are marginalised and excluded.

- Portugal: "Fundo Social Solidário" is a solidarity fund set at the initiative of the Portuguese Bishops' Conference; its objective is to contribute to resolving severe social problems caused by the crisis. It is managed by Caritas along with church institutions. Last year it supported 3,957 persons facing difficulties with issues like housing costs, health, education or jobs.

- Greece: the "Elpis Project" is funded by Caritas Italy, several Italian diocesan Caritates, Caritas Spain, Caritas France, and is carried out by Caritas Greece in collaboration with Caritas Europa. The project provides support to 500 disadvantaged families in different geographical regions in Greece through a monthly distribution of food and non-food items. The main goals of the project are to contribute to the reduction of the consequences of the crisis among disadvantaged and socially excluded people and to strengthen the network of Caritas in Greece in order to be able to help more people.

- Romania: the Caritas Romania Confederation created the National Home Care Programme to offer basic services, in the form of food, transportation and housekeeping, to improve the lives and meet the basic needs of people who are confined to bed. Since July 2013, the Caritas Romania Confederation, along with its partners, has been developing a nationwide homecare network, entitled "Seniorinet". In 2013, Caritas organisations offered support and dedicated programmes to 4,000 seniors.

Social services financed by the means of Social Impact Bonds (an example provided by our member Volonteurope)

In the UK, Essex County Council is delivering the first local authority social impact bond targeted at vulnerable children and young people on the edge of care, in cooperation with with Social Finance.

The Essex Social Impact Bond is a means of financing interventions with the simple aim of keeping young people out of the care system. The bond will fund intensive work with families experiencing difficult times and with complex needs, working with around 380 young people with the aim of keeping families together, not apart.

The SIB has raised over £3.1million of external investment to fund intensive support over five years with the aim of preventing children entering the care system and thus releasing (cashable) savings for the council.

Action for Children's programme will help 380 vulnerable 11-16 year olds on the edge of care or custody to stay safely at home with their families. The programme uses Multi-

[23] Most of examples are taken from Caritas Europa's Crisis Monitoring report.

Systemic Therapy, an intervention that focuses on improving parenting and rebuilding positive relationships. By focusing on early intervention rather than treatment, it will help families build the skills they need to manage crisis situations now and in the future.

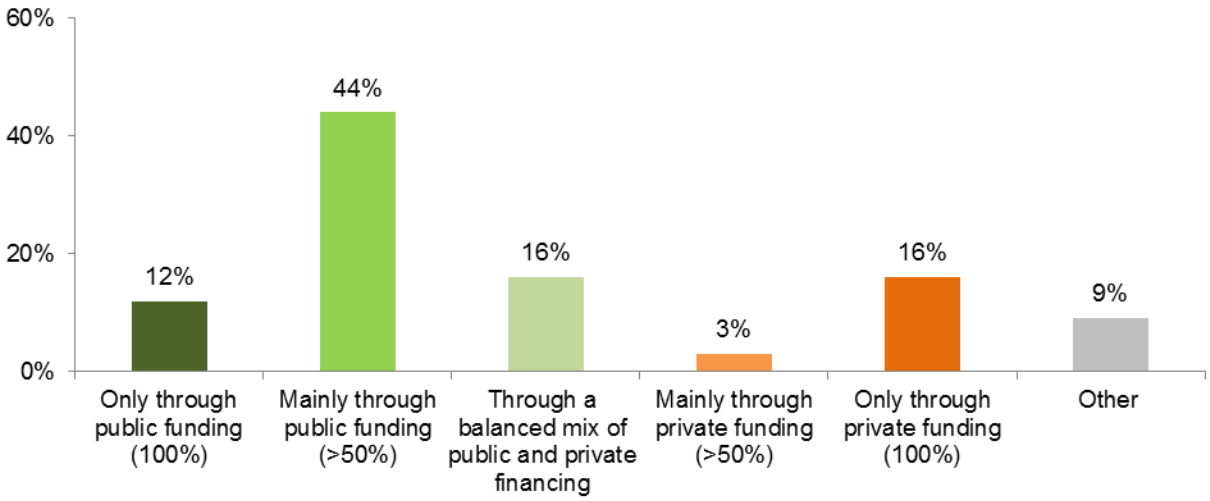
Children's Support Services (CSS) has entered into a payment-by-results (PbR) contract with Essex County Council. CSS will work with Social Finance who will help manage the delivery of the contract by Action for Children, one of the UK's largest children's charities.

Services for persons with disabilities (from our member the European Association of Service Providers for persons with disabilities – EASPD)

The funding of the sector is severely impacted by the economic crisis and austerity measures. Budget cuts are not only affecting the public sector but also non-public service providers that depend heavily on public funding.

The table below illustrates the repartition of sources of funding between public and private sources according to 2012 data.

Sources of funding of service providers to people with disabilities (EASPD, 2012)



Services provided by Work Integration Social Enterprises – WISE (from our member ENSIE)

Services funded by a mix of public and private funds:

- In Italy, several social cooperatives providing work integration services for persons in vulnerable situations receive public funding. They usually have commercial activities, as they sell the goods produced by disadvantaged workers who work there. In addition, they raise funds from foundations and other private sources. Examples: social cooperative Paolo Babini, Cooperativa Nazareno, and Cooperative OPIMM.
- In the Netherlands, the enterprise Brewery De Prael receives public funding for 30% of their turnover.
- In Poland, there are approximately 1,300 social cooperative funded by a mix of public and private sources.

Examples of WISEs financed just by private funding:

- In the Netherlands, the enterprise webservice Swink funds itself from the products or services it sells on the market.
- In Poland, the Foundation for Development of Social Economy "Be together" in Cieszyn and the Foundation Giesche in Katowice are completely privately funded.

EDUCATION SERVICES OF GENERAL INTEREST

Compulsory school (from our member the European Parents' Association)

All EU member states have ratified the UN Convention on the Rights of the Child, while the US has not. On the basis of article 28 of the Convention, state parties have the obligation to make primary education compulsory and freely available to all.

This is not the situation in many EU countries. In many countries if a parent/family opts for church schools or not the traditional curriculum (eg. a Waldorf school or homeschooling), there is no public funding at all, although it is considered a form of compulsory schooling. It is accepted as a form of attending school within the framework of compulsory schooling, as pupils do the same exams and they can go from such a school to a state one or the other way round.

In Hungary, many schools, providing the only acceptable option for talented or special needs children, are only partially funded by the state and parents must pay a fee. Arts education (music, drawing, etc) and most sports courses are also not financed or only partially financed. Early childhood services (kintergardens) are also only partially financed.

Even in Norway all schools recognised as places for compulory education are state financed, but some of them, like Waldorf schools or church schools are only 85% financed (parents pay 15%) while others are 100% financed. For some Special Educational Needs (SEN) children fully free schools are not available.

In Austria, public school teachers are paid by the government and the government (local for primary, national for secondary) is responsible for the building & equipment (furniture, screens, beamers, computers, electricity, heating, toilet paper etc.) and all supporting staff (cleaning, housekeepers, secretaries, school doctors, school psychologists, social workers, teachers for extra-curricular activities, extra staff for outdoor activities like sports and language weeks).

In public schools pupils have school books for free and free fares to go to school (in Vienna there is an affordable ticket for after-school activities for all students).
There is a great difference between catholic and protestant schools on one hand and so called "free schools" (mainly Waldorf-Steiner, Montessori) and other religious ones (e.g. Islamic) on the other.

Catholic and protestant schools are privileged in contrast to other private schools, because there the government is responsible for all teachers' salaries. The costs for all other staff, the buildings and equipment have to be met by the parents. Pupils also get free schoolbooks. In all other private schools parents have to pay for all things in general.

HEALTH SERVICES OF GENERAL INTEREST

In the EU, according to our member the European Public Health Alliance (EPHA), in many countries health services such as for persons with disabilities, cancer-patient taxi services, nurses funded by charities, old people homes, hospices and community rehabilitation schemes are privately funded.

ANNEX C

ISDS case study for Universal Health Insurance

There are concerns about the use of arbitration tribunal in the context of Health Systems: In Achmea v Slovakia, a company investing in health insurance services sued the Slovakian government over plans to establish a single health insurance company. In this matter, the tribunal ruled it did not have jurisdiction over the democratic process (Achmea I - Slovakia won) – but the case for compensation remains open and the company won a previous suit in 2012 (Achmea II – Achmea won).[24]

- Achmea I (PCA Case no 2013-12)[25]: The arbitral tribunal announced that the design and implementation of its public health policy is for the State alone to assess. Moreover, it stated that it is not empowered to intervene in the democratic process of a sovereign state and concluded that it has no jurisdiction over the dispute. The arbitral tribunal dismissed all of Achmea's claims. It also ordered Achmea B.V. to pay to the Slovak Republic the legal costs in the amount of € 1.011 million, as well as the costs of tribunal in the amount over EUR 340 thousand. Slovakia 'won' but still had to pay 25% of its costs and Achmea paid the costs of arbitration and 75% of Slovakia's costs. The costs of the Slovak Republic in the arbitration have been so far EUR 1.348 million, so, even when victorious it still costs the state to defend.[26]

- Achmea II (PCA Case no 2008-13): Achmea BV won the arbitration case against Slovakia in which the Dutch insurer claimed the country breached investment treaties when it forbade health insurers from making a profit. The arbiters on Dec. 7 2012 awarded Achmea 22 million euros ($28.4 million) in compensation for damages incurred by its Slovak subsidiary Union AS because of the profit.[27]

More information: www.socialplatform.org

Contact person: Valentina Caimi, Policy and Advocacy Adviser

@social_platform **facebook.com/socialplatform**

[24] Eleanor Brooks: Is the NHS under threat from free trade? http://theconversation.com/is-the-nhs-under-threat-from-free-trade-43857
[25] http://www.italaw.com/cases/2564
[26] http://www.italaw.com/sites/default/files/case-documents/italaw3207.pdf
[27] http://www.bloomberg.com/news/articles/2012-12-10/achmea-wins-arbitration-against-slovakia-over-insurance